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EXTRAORDINARY

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PART II—Section 2

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इस भाग में विभिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।

Separate paging is given to this Part in order that it may be filed as a separate compilation.

LOK SABHA

The following Bills were introduced in Lok Sabha on the 31st May, 1990:—

BILL No. 102 OF 1990

A Bill further to amend the Citizenship Act, 1955.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. This Act may be called the Citizenship (Amendment) Act, 1990.
- 57 of 1955. 2. In section 4 of the Citizenship Act, 1955 (hereinafter referred to as the principal Act),—

(a) in sub-section (1),—

(i) for the words, figures and letters "A person born outside India on or after the 26th January, 1950, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth", the following shall be substituted, namely:—

"A person born outside India,—

(a) on or after the 26th January, 1950, but before the commencement of the Citizenship (Amendment) Act, 1990, shall be a citizen of India by descent if his father is a citizen of India at the time of his birth;

Short
title.

Amend-
ment of
section
4.

(b) on or after such commencement, shall be a citizen of India by descent if either of his parents is a citizen of India at the time of his birth”;

(ii) in the opening portion of the proviso, after the words “if the father of such a person”, the words, brackets and letter “referred to in clause (a)” shall be inserted;

(iii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that if either of the parents of such a person referred to in clause (b) was a citizen of India by descent only, that person shall not be a citizen of India by virtue of this section, unless—

(a) his birth is registered at an Indian consulate within one year of its occurrence or the commencement of the Citizenship (Amendment) Act, 1990, whichever is later, or, with the permission of the Central Government, after the expiry of the said period; or

(b) either of his parents is, at the time of his birth, in service under a Government in India.”;

(b) in sub-section (3), for the words “any male person”, the words “any person” shall be substituted.

Amend-
ment of
section 8.

3. In section 8 of the principal Act, in sub-section (2), for the words “a male person”, the words “a person” shall be substituted.

STATEMENT OF OBJECTS AND REASONS

India is a signatory to the Convention on Elimination of all Forms of Discrimination against Women adopted by the General Assembly of the United Nations on 18th December, 1979. Article 9(2) of the Convention requires that the "States Parties shall grant women equal rights with men with respect to the nationality of their children". Sub-section (1) of section 4 of the Citizenship Act, 1955 provides that a person born outside India on or after 26th January, 1950 shall be a citizen of India by descent only if his father is an Indian citizen at the time of his birth. With a view to eliminate discrimination against women in respect of nationality of their children and in order to bring the provisions of the Citizenship Act, 1955 in conformity with article 9(2) of the aforesaid Convention, it is proposed to amend the said Act so as to provide that every person born outside India on or after the coming into force of the provisions of the Bill shall become a citizen of India by descent if either of his parents is a citizen of India.

2. The Bill seeks to achieve the aforesaid object.

NEW DELHI;

MUFTI MOHAMMED SAYEED.

The 24th May, 1990.

BILL NO. 103 OF 1990

A Bill to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

Short title
and com-
mence-
ment.

1. (1) This Act may be called the Public Liability Insurance Act, 1990.

(2) It shall come into force on such date as the Central Government may, by notification, appoint.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) "accident" means an accident occurring while handling any hazardous substance;

(b) "Collector" means the Collector having jurisdiction over the area in which the accident occurs;

(c) "handling", in relation to any hazardous substance, means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance;

29 of 1986.

(d) "hazardous substance" means any substance or preparation which is defined as hazardous substance under the Environment (Protection) Act, 1986, and exceeding such quantity as may be specified, by notification, by the Central Government;

(e) "insurance" means insurance against liability under sub-section (1) of section 3;

(f) "notification" means a notification published in the Official Gazette;

(g) "owner" means a person who has control over handling any hazardous substance;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "rules" means rules made under this Act;

(j) "vehicle" means any mode of surface transport other than railways.

3. (1) Where death or injury to any person (other than a workman) or damage to any property has resulted from an accident, the owner shall be liable to give such relief as is specified in the Schedule for such death, injury or damage.

Liability to give relief in certain cases on principle of no fault.

(2) In any claim for relief under sub-section (1), (hereinafter referred to in this Act as claim for relief) the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person.

Explanation.—For the purposes of this section,—

8 of 1923.

(i) "workman" has the meaning assigned to it in the Workmen's Compensation Act, 1923;

(ii) "injury" includes permanent total or permanent partial disability or sickness resulting out of an accident.

4. (1) Every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance whereby he is insured against liability to give relief under sub-section (1) of section 3:

Duty of owner to take out insurance policies.

Provided that any owner handling any hazardous substance immediately before the commencement of this Act shall take out such insurance policy or policies as soon as may be and in any case within a period of one year from such commencement.

(2) Every owner shall get the insurance policy, referred to in sub-section (1), renewed from time to time before the expiry of the period of validity thereof so that the insurance policies may remain in force throughout the period during which such handling is continued.

(3) The Central Government may, by notification, exempt from the operation of sub-section (1) any owner, namely:—

- (a) the Central Government;
- (b) any State Government;
- (c) any corporation owned or controlled by the Central Government or a State Government; or
- (d) any local authority;

Provided that no such order shall be made in relation to such owner unless a fund has been established and is maintained by that owner in accordance with the rules made in this behalf for meeting any liability under sub-section (1) of section 3.

Verifica-
tion and
publica-
tion of
accident
by Collec-
tor.

5. Whenever it comes to the notice of the Collector that an accident has occurred at any place within his jurisdiction, he shall verify the occurrence of such accident and cause publicity to be given in such manner as he deems fit for inviting applications under sub-section (1) of section 6.

Applica-
tion for
claim for
relief.

6. (1) An application for claim for relief may be made—

- (a) by the person who has sustained the injury;
- (b) by the owner of the property to which the damage has been caused;
- (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or
- (d) by any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be:

Provided that where all the legal representatives of the deceased have not joined in any such application for relief, the application shall be made on behalf of or for the benefit of all the legal representatives of the deceased and the legal representatives who have not so joined shall be impleaded as respondents to the application.

(2) Every application under sub-section (1) shall be made to the Collector and shall be in such form contain such particulars and shall be accompanied by such documents as may be prescribed.

(3) No application for relief shall be entertained unless it is made within five years of the occurrence of the accident.

Award of
relief.

7. (1) On receipt of an application under sub-section (1) of section 6, the Collector shall, after giving notice of the application to the owner and the insurer and after giving the parties (including the insurer) an opportunity of being heard, hold an inquiry into the claim or, each of the claims, and may make an award determining the amount of relief which appears to him to be just and specifying the person or persons to whom such amount of relief shall be paid.

(2) The Collector shall arrange to deliver copies of the award to the parties concerned expeditiously and in any case within a period of fifteen days from the date of the award.

(3) When an award is made under this section, the owner or the insurer, as the case may be, who is required to pay any amount in terms of such award shall, within thirty days of the date of announcement of the award, deposit the entire amount so awarded in such manner as the Collector may direct.

(4) In holding any inquiry under sub-section (1), the Collector may, subject to any rules made in this behalf, follow such summary procedure as he thinks fit.

(5) The Collector shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Collector shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

2 of 1974.

(6) Where the insurer or the owner against whom the award is made under sub-section (1) fails to deposit the amount of such award within the period specified under sub-section (3), such amount shall be recoverable from the owner, or as the case may be, the insurer as arrears of land revenue or of public demand.

(7) A claim for relief in respect of death of, or injury to, any person or damage to any property shall be disposed of as expeditiously as possible.

8. (1) The right to claim relief under sub-section (1) of section 3 in respect of death of, or injury to, any person or damage to any property shall be in addition to any other right to claim compensation in respect thereof under any other law for the time being in force.

Provi-
sions as to
other right
to claim
compen-
sation for
death, etc.

(2) Notwithstanding anything contained in sub-section (1), where in respect of death of, or injury to, any person or damage to any property, the owner, liable to give claim for relief, is also liable to pay compensation under any other law, the amount of such compensation shall be reduced by the amount of relief paid under this Act.

9. Any person authorised by the Central Government may, for the purposes of ascertaining whether any requirements of this Act or of any rule or of any direction given under this Act have been complied with, require any owner to submit to that person such information as that person may reasonably think necessary.

Power to
call for
informa-
tion.

10. Any person, authorised by the Central Government in this behalf, shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place, premises or vehicle, where hazardous substance is handled for the purpose of determining whether any provisions of this Act or of any rule or of any direction given under this Act is being or has been complied with and such owner is bound to render all assistance to such person.

Power of
entry and
inspec-
tion.

11. (1) If a person, authorised by the Central Government in this behalf, has reason to believe that handling of any hazardous substance is taking place in any place, premises or vehicle, in contravention of sub-section (1) of section 4, he may enter into and search such place, premises or vehicle for such handling of hazardous substance.

Power of
search
and
seizure.

(2) Where, as a result of any search under sub-section (1) any handling of hazardous substance has been found in relation to which contravention of sub-section (1) of section 4 has taken place, he may seize such hazardous substance and other things which, in his opinion, will be useful for, or relevant to, any proceeding under this Act:

Provided that where it is not practicable to seize any such substance or thing, he may serve on the owner an order that the owner shall not remove, part with, or otherwise deal with, the hazardous substance and such other things except with the previous permission of that person.

(3) He may, if he has reason to believe that it is expedient so to do to prevent an accident dispose of the hazardous substance seized under sub-section (2) immediately in such manner as he may deem fit.

(4) All expenses incurred by him in the disposal of hazardous substances under sub-section (3) shall be recoverable from the owner as arrears of land revenue or of public demand.

Power
to give
direc-
tions.

12. Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in exercise of its powers and performance of its functions under this Act, issue such directions in writing as it may deem fit for the purposes of this Act to any owner or any person, officer, authority or agency and such owner, person, officer, authority or agency shall be bound to comply with such directions.

Explanation.—For the removal of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct—

(a) prohibition or regulation of the handling of any hazardous substance; or

(b) stoppage or regulation of the supply of electricity, water or any other service.

Power
to make
applica-
tion to
courts for
restraining
owner from
handling
hazardous
substances.

13. (1) If the Central Government or any person authorised by that Government in this behalf has reason to believe that any owner has been handling any hazardous substance in contravention of any of the provisions of this Act, that Government or, as the case may be, that person may make an application to a Court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of first-class for restraining such owner from such handling.

(2) On receipt of the application under sub-section (1), the Court may make such order as it deems fit.

(3) Where under sub-section (2) the Court makes an order restraining any owner from handling hazardous substance, it may, in that order—

(a) direct such owner to desist from such handling;

(b) authorise the Central Government or, as the case may be, the person referred to in sub-section (1), if the direction under

clause (a) is not complied with by the owner to whom such direction is issued, to implement the direction in such manner as may be specified by the Court.

(4) All expenses incurred by the Central Government, or as the case may be, the person in implementing the directions of Court under clause (b) of sub-section (3), shall be recoverable from the owner as arrears of land revenue or of public demand.

14. (1) If any owner contravenes any of the provisions of sub-section (1) or sub-section (2) of section 4 or fails to comply with any direction issued under section 12, he shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years, or with fine which shall not be less than one lakh rupees, or with both.

(2) Whoever, having already been convicted of an offence under sub-section (1), is convicted for the second offence or any offence subsequent to the second offence, he shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees.

15. If any owner fails to comply with direction issued under section 9 or fails to comply with order issued under sub-section (2) of section 11, or obstructs any person in discharge of his functions under section 10 or sub-section (1) or sub-section (3) of section 11, he shall be punishable with imprisonment which may extend to three months, or with fine which may extend to ten thousand rupees, or with both.

16. (1) Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Penalty for contravention of sub-section (1) or sub-section (2) of section 4 or failure to comply with directions under section 12.

Penalty for failure to comply with direction under section 9 or order under section 11 or obstructing any person in discharge of his functions under section 10 or 11.

Offences by companies.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any body corporate and includes a firm or other association of individuals;

(b) “director”, in relation to a firm, means a partner in the firm.

Offences
by Gov-
ernment
Depart-
ments.

17. Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Cogniz-
ance of
offences.

18. No court shall take cognizance of any offence under this Act except on a complaint made by—

(a) the Central Government or any authority or officer authorised in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

Power to
delegate.

19. The Central Government may, by notification, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act (except the power under section 23) as it may deem necessary or expedient to any person (including any officer, authority or other agency).

Protec-
tion of
action
taken in
good
faith.

20. No suit, prosecution or other legal proceeding shall lie against the Government or the person, officer, authority or other agency in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued thereunder.

Advisory
Commit-
tee.

21. (1) The Central Government may, from time to time, constitute an Advisory Committee on the matters relating to the insurance policy under this Act.

(2) The Advisory Committee shall consist of—

(a) three officers representing the Central Government;

(b) two persons representing the insurers;

(c) two persons representing the owners; and

(d) two persons from amongst the experts of insurance or hazardous substances,

to be appointed by the Central Government.

(3) The Chairman of the Advisory Committee shall be one of the members representing the Central Government, nominated in this behalf by that Government.

22. The provisions of this Act and any rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.

Effect of
other
laws.

23. (1) The Central Government may, by notification, make rules for carrying out the purposes of this Act.

Power to
make
rules.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) establishment and maintenance of fund under sub-section (3) of section 4;

(b) the form of application and the particulars to be given therein and the documents to accompany such application under sub-section (2) of section 6;

(c) the procedure for holding an inquiry under sub-section (4) of section 7;

(d) the purposes for which the Collector shall have powers of a Civil Court under sub-section (5) of section 7;

(e) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 18;

(f) any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE

[See section 3(1)]

(i) Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case.

(ii) For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses, if any, incurred on the victim up to a maximum of Rs. 12,500.

(iii) For permanent total or permanent partial disability or other injury or sickness, the relief will be (a) reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case and (b) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000.

(iv) For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months: provided the victim has been hospitalised for a period exceeding 3 days and is above 16 years of age.

(v) Up to Rs. 6,000, depending on the actual damage, for any damage to private property.

STATEMENT OF OBJECTS AND REASONS

The growth of hazardous industries, processes and operations in India has been accompanied by the growing risks from accidents, not only to the workmen employed in such undertakings, but also innocent members of the public who may be in the vicinity. Such accidents lead to death and injury to human beings and other living beings and damage private and public properties. Very often, the majority of the people affected are from the economically weaker sections and suffer great hardships because of delayed relief and compensation. While workers and employees of hazardous installations are protected under separate laws, members of the public are not assured of any relief except through long legal processes. Industrial units seldom have the willingness to readily compensate the victims of accidents and the only remedy now available for the victims is to go through prolonged litigation in a Court of Law. Some units may not have the financial resources to provide even minimum relief.

2. It is felt essential, therefore, to provide for Mandatory Public Liability Insurance for installations handling hazardous substances to provide minimum relief to the victims. Such an insurance apart from safeguarding the interests of the victims of accidents would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. If the objective of providing immediate relief is to be achieved, the mandatory public liability insurance should be on the principle of "no fault" liability as it is limited to only relief on a limited scale. However, availability of immediate relief would not prevent the victims to go to Courts for claiming larger compensation.

3. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 25th May, 1990.

NILAMANI ROUTRAY.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 empowers the Central Government to make rules for carrying out the purposes of the proposed legislation. The matters with respect to which rules may be made have been detailed in sub-clause (2) and relate mainly—

(i) to the establishment and maintenance of funds by the Central Government or the State Governments and Corporations, etc., for giving relief to victims of accidents;

(ii) to prescribe the form of application of the relief and the documents to be accompanied by such application;

(iii) to prescribe the procedure for holding an inquiry by the Collector for the purpose of making any award of the amount of relief; and

(iv) to prescribe the purposes for which the Collector shall have powers of a Civil Court.

2. As the matters with respect to which rules under the aforesaid clause are sought to be made are matters of procedure or detail or matters with respect to which it is not practicable to make express provision in the legislation itself, the delegation of legislative power is of normal character.

BILL NO. 104 OF 1990

A Bill to determine the conditions of service of the Chief Election Commissioner and other Election Commissioners and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. This Act may be called the Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act, 1990.

Short
title.

2. In this Act, unless the context otherwise requires,—

Defini-
tions.

(a) "Chief Election Commissioner" means the Chief Election Commissioner appointed under article 324 of the Constitution;

(b) "Election Commissioner" means any other Election Commissioner appointed under article 324 of the Constitution.

CHAPTER II

SALARY AND OTHER CONDITIONS OF SERVICE OF THE CHIEF ELECTION
COMMISSIONER AND ELECTION COMMISSIONERS

Salary.

3. (1) There shall be paid to the Chief Election Commissioner a salary which is equal to the salary of a Judge of the Supreme Court.

(2) There shall be paid to an Election Commissioner a salary which is equal to the salary of a Judge of a High Court:

Provided that if a person who, immediately before the date of assuming office as the Chief Election Commissioner or, as the case may be, an Election Commissioner, was in receipt of, or, being eligible so to do, had elected to draw, a pension (other than a disability or wound pension) in respect of any previous service under the Government of the Union or under the Government of a State, his salary in respect of service as the Chief Election Commissioner or, as the case may be, an Election Commissioner shall be reduced—

(a) by the amount of that pension; and

(b) if he had, before assuming office, received, in lieu of a portion of the pension due to him in respect of such previous service, the commuted value thereof, by the amount of that portion of the pension.

Term of
office.

4. The Chief Election Commissioner or an Election Commissioner shall hold office for a term of six years from the date on which he assumes his office:

Provided that where—

(i) the Chief Election Commissioner attains the age of sixty-five years; or

(ii) an Election Commissioner attains the age of sixty-two years,

before the expiry of the said term of six years, he shall vacate his office on the date on which he attains the said age:

Provided further that the Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office.

Explanation.—For the purpose of this section, the term of six years in respect of the Chief Election Commissioner or an Election Commissioner holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office.

Leave.

5. (1) A person who, immediately before the date of assuming office as the Chief Election Commissioner or an Election Commissioner, was in service of Government may be granted during his tenure of office but not thereafter, leave in accordance with the rules for the time being applicable to the Service to which he belonged before such date and he shall be entitled to carry forward the amount of leave standing at his credit on such date, notwithstanding anything contained in section 6.

(2) Any other person who is appointed as the Chief Election Commissioner or an Election Commissioner may be granted leave in -

ance with such rules as are for the time being applicable to a member of the Indian Administrative Service.

(3) The power to grant or refuse leave to the Chief Election Commissioner or an Election Commissioner and to revoke or curtail leave granted to him, shall vest in the President.

6. (1) A person who, immediately before the date of assuming office as the Chief Election Commissioner or an Election Commissioner was in service of Government, shall be deemed to have retired from service on the date on which he enters upon office as the Chief Election Commissioner or an Election Commissioner but his subsequent service as the Chief Election Commissioner or an Election Commissioner shall be reckoned as continuing approved service counting for pension in Service to which he belonged.

Pension payable to Election Commissioners.

(2) Where the Chief Election Commissioner demits office [whether in any manner specified in sub-section (4) or by resignation], he shall, on such demission be entitled to—

(a) a pension which is equal to the pension payable to a Judge of the Supreme Court in accordance with the provisions of Part III of the Schedule to the Supreme Court Judges (Conditions of Service) Act, 1958, as amended from time to time; and

11 of 1958.

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of the Supreme Court under the said Act and the rules made thereunder, as amended from time to time.

(3) Where an Election Commissioner demits office [whether in any manner specified in sub-section (4) or by resignation], he shall, on such demission, be entitled to—

(a) a pension which is equal to the pension payable to a Judge of a High Court in accordance with the provisions of Part III of the First Schedule to the High Court Judges (Conditions of Service) Act, 1954, as amended from time to time; and

28 of 1954.

(b) such pension (including commutation of pension), family pension and gratuity as are admissible to a Judge of a High Court under the said Act and the rules made thereunder, as amended from time to time.

(4) Except where the Chief Election Commissioner or an Election Commissioner demits office by resignation, he shall be deemed, for the purpose of this Act, to have demitted his office if, and only if,—

(a) he has completed the term of office specified in section 4, or

(b) he has attained the age of sixty-five years, or as the case may be, sixty-two years, or

(c) his demission of office is medically certified to be necessitated by ill-health.

7. Every person holding office as the Chief Election Commissioner or an Election Commissioner, shall be entitled to subscribe to the General Provident Fund (Central Services).

Right to subscribe to General Provident Fund.

Other
condi-
tions of
service.

8. Save as otherwise provided in this Act, the conditions of service relating to travelling allowance, provision of rent-free residence and exemption from payment of income-tax on the value of such rent-free residence, conveyance facilities, sumptuary allowance, medical facilities and such other conditions of service as are, for the time being, applicable to,—

(i) a Judge of the Supreme Court under Chapter IV of the Supreme Court Judges (Conditions of Service) Act, 1958 and the rules made thereunder, shall, so far as may be, apply to the Chief Election Commissioner;

41 of 1958.

(ii) a Judge of a High Court under Chapter IV of the High Court Judges (Conditions of Service) Act, 1954 and the rules made thereunder, shall, so far as may be, apply to an Election Commissioner.

28 of 1954.

FINANCIAL MEMORANDUM

Sub-clause (1) of clause 3, clause 6 and clause 8(i), of the Bill pertains to the salary and other conditions of service of the Chief Election Commissioner and would involve an additional recurring expenditure of Rs. 64,000/- per annum from the Consolidated Fund of India.

2. Sub-clause (2) of clause 3, clause 6 and clause 8(ii), of the Bill pertains to the salary and other conditions of service of an Election Commissioner and would involve a recurring expenditure of Rs. 1,20,000/-, per Election Commissioner, per annum from the Consolidated Fund of India. However, as there is no post of Election Commissioner at present, no expenditure from the Consolidated Fund of India would be involved.

3. The Bill when enacted will not involve any other recurring or non-recurring expenditure from the Consolidated Fund of India.

BILL NO. 107 OF 1990

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Constitution (Seventy-second Amendment) Act, 1990.

Short
title and
Com-
mence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. After article 371-I of the Constitution, the following article shall be inserted, namely:—

Insertion
of new
article
371J.

“371-J. Notwithstanding anything in this Constitution,—

(a) the Legislative Assembly of the Capital State of Delhi shall not have, but the Parliament shall have, power to make laws for the State or any part thereof with respect to any of the matters enumerated in entries 1 and 2 in the State List;

Special
provision
with
respect
to the
Capital
State of
Delhi.

(b) the Governor of the Capital State of Delhi shall have special responsibility with respect to law and order in that State and in the discharge of his functions in relation thereto, the Governor shall exercise, subject to such general or special directions, if any, as may be given by the President, his individual judgment as to the action to be taken;

(c) the approval of the Governor of the Capital State of Delhi shall be obtained with respect to any matter relating to provision of municipal services required by the Union, the Delhi Urban Arts Commission and the preparation and finalisation of the Master Plan of Delhi, including any amendments thereto, and in the discharge of his functions in relation thereto, the Governor shall exercise, subject to such general or special directions, if any, as may be given by the President, his individual judgment as to the action to be taken:

Provided that if any question arises whether any matter is or is not a matter as respects which the Governor is under clause (b) or clause (c) required to act in the exercise of his individual judgment, the decision of the Governor in his discretion shall be final and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in the exercise of his individual judgment.”.

Amend-
ment of
the First
Schedule.

3. In the First Schedule to the Constitution,—

(a) under the heading “I. THE STATES”, after entry 25, the following entry shall be inserted, namely:—

“26. Capital State of Delhi The territory which immediately before the commencement of this Constitution was comprised in the Chief Commissioner’s Province of Delhi.”;

(b) under the heading “II. THE UNION TERRITORIES”, entry 1 relating to Delhi shall be omitted and entries 2 to 7 shall be re-numbered as entries 1 to 6 respectively.

Amend-
ment of
the
Fourth
Schedule.

4. In the Fourth Schedule to the Constitution, in the Table, for entry 26, the following entry shall be substituted, namely:—

“26. Capital State of Delhi.....3.”.

STATEMENT OF OBJECTS AND REASONS

The Union territory of Delhi is at present administered through an Administrator, designated as the Lieutenant Governor. Under the Delhi Administration Act, 1968 it had a Metropolitan Council, which functioned as an advisory body on important matters relating to the administration of the Union territory, and an Executive Council consisting of not more than four members, appointed by the President to assist and advise the Administrator in the exercise of his functions, other than those which he was required to exercise in his discretion. The need for re-organising the administrative set-up in the Union territory of Delhi has been under consideration of the Government for quite some time.

2. There has been a general demand by the public of Delhi that they should be given an effective voice in the running of their own administration and that in order to satisfy the democratic and political aspirations of the people, Delhi should be accorded the status of a full-fledged constituent State of the Union. At present, according to some, there is lack of accountability of administration to the people. The Government of India had appointed on 24th December, 1987 a Committee to go into the various issues connected with the administration of Delhi and to recommend *inter-alia* the streamlining of the existing administrative set-up. The Committee submitted its Report to the Government on 14th December, 1989. After considering the recommendations of the Committee, and after having considerable discussions with various political parties, it is now proposed to confer Statehood on the Union territory of Delhi. It will be known as "Capital State of Delhi". Having regard to the location of the National Capital in Delhi it is also proposed as follows:—

(i) the Legislative Assembly of the proposed State shall not have powers to make laws with respect to any of the matters enumerated in entries 1 (Public Order) and 2 (Police) of the State List of the Seventh Schedule to the Constitution;

(ii) the Governor of the new proposed State shall have special responsibilities with respect to law and order in the State and in the discharge of his functions in relation thereto, the Governor shall exercise his individual judgment as to the action to be taken and shall act in conformity with such general or special directions as may be given by the President;

(iii) Matters relating to provision of municipal services required by the Government of India, and the Delhi Urban Arts Commission, and the preparation and finalisation of the Master Plan of Delhi shall be subject to the approval of the Governor acting in his individual judgment but under such general or special directions as may be given by the President.

3. In order to give effect to the above proposal it is necessary to make special provisions in the Constitution. The Bill accordingly seeks further to amend the Constitution to provide for the aforesaid matters. A separate legislation to give effect to the proposal will be brought forward later.

NEW DELHI;

The 29th May, 1990.

MUFTI MOHAMMED SAYEED.

BILL NO. 105 OF 1990

A Bill further to amend the President's Emoluments and Pension Act, 1951.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

Short
title
and
com-
mence-
ment.

1. (1) This Act may be called the President's Emoluments and Pension (Amendment) Act, 1990.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amend-
ment of
section
1A.

2. In section 1A of the President's Employments and Pension Act, 1951 hereinafter referred to as the principal Act, for the words "fifteen thousand rupees", the words "twenty thousand rupees" shall be substituted.

30 of 1951.

Amend-
ment of
section 2.

3. In section 2 of the principal Act,—

(a) in sub-section (1), for the words "thirty thousand rupees", the words "one lakh twenty thousand rupees" shall be substituted.

(b) the sub-section (2), for clauses (a) and (b), the following clauses shall be substituted, namely:—

“(a) to the use of a furnished residence (including its maintenance), without payment of rent, a telephone and a motor-car, free of charge or to such car allowance as may be specified in the rules;

(b) to secretarial staff consisting of a Private Secretary, a Personal Assistant and a Peon, and office expenses the total expenditure on which shall not exceed twelve thousand rupees per annum;

(c) to medical attendance and treatment free of charge.

Explanation.—For the purposes of this sub-section, “residence” shall have the meaning assigned to it in the Salaries and Allowances of Ministers Act, 1952.”

STATEMENT OF OBJECTS AND REASONS

The emoluments of Rs. 15,000 per mensem admissible to the President of India since 26th December, 1985 have not been revised. There has been rise in prices in the last few years and the salaries of Ministers and Members of Parliament were revised with effect from 1-4-1988. It is considered necessary to raise the emoluments of the President to Rs. 20,000 per mensem.

2. Since it is proposed to enhance the emoluments of the President to Rs. 2,40,000 per annum it seems necessary to increase the pension of the ex-Presidents of India to Rs. 1,20,000 per annum.

3. The amount of Rs. 12,000 per annum provided to a former President for the maintenance of secretarial staff and office expenses was fixed in 1951 and no change has so far been made in the amount. At present facilities like accommodation, telephone and car are not being provided to the former Presidents. In order to enable them to maintain the dignity of the august office they held earlier, it is proposed to allow them certain facilities, like rent free accommodation with free electricity and water, telephone and car facilities and secretarial assistance on an enhanced scale.

4. The Bill seeks to achieve the above objects.

NEW DELHI;
The 29th May, 1990.

MUFTI MOHAMMAD SAYEED.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter No. 1/4/89-M&G. dated the 29th May, 1990 from Shri Mufti Mohammad Sayeed, Minister of Home Affairs to the Secretary-General, Lok Sabha].

The President having been informed of the subject matter of the President's Emoluments and Pension (Amendment) Bill, 1990, recommends for its introduction in Lok Sabha under article 117(1) of the Constitution and for its consideration by Lok Sabha under article 117(3) of the Constitution.

FINANCIAL MEMORANDUM

Clauses 2 and 3 of the Bill provided for increasing the emoluments of the President and increasing pension of the former Presidents of India and for providing other facilities like rent free furnished accommodation, free electricity, water, telephone and car facilities and secretarial assistance.

2. The Bill, if enacted, will involve expenditure from the Consolidated Fund of India. It is likely to involve an additional recurring expenditure of about Rs. 10 lakhs per annum only.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Sub-clause (b) of clause 3 of the Bill empowers the Central Government to make rules for the purpose of specifying allowance in lieu of a motor-car to retired Presidents. This is a matter of detail. The delegation of legislative power is, therefore, of a normal character.

BILL NO. 108 OF 1990

A Bill to provide for the levy of gift-tax.

BE it enacted by Parliament in the Forty-first Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Gift-tax Act, 1990.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall be deemed to have come into force on the 20th day of March, 1990.

Short
title,
extent
and com-
mence-
ment.

2. In this Act, unless the context otherwise requires,—

(i) “amalgamation” shall have the meaning assigned to it in clause (1B) of section 2 of the Income-tax Act;

(ii) “Appellate Tribunal” means the Appellate Tribunal constituted under section 252 of the Income-tax Act;

Defini-
tions.

(iii) "assessee" means a person by whom gift-tax or any other sum of money is payable under this Act, and includes—

(a) every person in respect of whom any proceeding under this Act has been taken for the determination of gift-tax payable by him or by any other person or the amount of refund due to him or such other person;

(b) every person who is deemed to be an assessee under this Act;

(c) every person who is deemed to be an assessee in default under this Act;

(iv) "Assessing Officer" means the Assistant Commissioner or the Income-tax Officer who is vested with the relevant jurisdiction by virtue of directions or orders issued under sub-section (1) or sub-section (2) of section 120 or any other provision of the Income-tax Act which apply for the purposes of gift-tax under section 7 of this Act, and also the Deputy Commissioner who is directed under clause (b) of sub-section (4) of the said section 120 to exercise or perform all or any of the powers and functions conferred on or assigned to the Assessing Officer under that Act;

(v) "assessment" includes reassessment;

(vi) "assessment year" means the period of twelve months commencing on the 1st day of April every year;

(vii) "Board" means the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963;

54 of 1963.

(viii) "charitable purpose" includes relief of the poor, education, medical relief, and the advancement of any other object of general public utility;

(ix) the expressions "company", "Indian company" and "company in which the public are substantially interested" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act;

(x) "convertible foreign exchange" means foreign exchange which is for the time being treated by the Reserve Bank of India as convertible foreign exchange for the purposes of the Foreign Exchange Regulation Act, 1973 and any rules made thereunder;

46 of 1973.

(xi) "donee" means any person who acquires any property under a gift, and, where a gift is made to a trustee for the benefit of another person, includes both the trustee and the beneficiary;

(xii) "donor" means any person who makes a gift;

(xiii) "executor" includes an Administrator or any other person administering the estate of a deceased person;

(xiv) "Foreign Exchange Regulation Act" means the Foreign Exchange Regulation Act, 1973;

46 of 1973.

(xv) the expressions "firm", "partner" and "partnership" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act;

(xvi) "gift" means the transfer by one person to another of any existing movable or immovable property made voluntarily and without consideration in money or money's worth, and includes the transfer or conversion of any property referred to in section 4, deemed to be a gift under that section but does not include receipts which are income within the meaning of the Income-tax Act;

Explanation.—A transfer of any building or part thereof referred to in clause (iii), clause (iiia) or clause (iiib) of section 27 of the Income-tax Act by the person who is deemed under the said clause to be the owner thereof made voluntarily and without consideration in money or money's worth, shall be deemed to be a gift made by such person;

43 of 1961.

(xvii) "Income-tax Act" means the Income-tax Act, 1961;

5 of 1908.

(xviii) "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908;

(xix) "non-resident" shall have the meaning assigned to it in clause (30) of section 2 of the Income-tax Act;

(xx) "non-resident Indian" shall have the meaning assigned to it in clause (e) of section 115C of the Income-tax Act;

(xxi) "person" includes a Hindu undivided family or a company or an association or a body of individual or persons, whether incorporated or not;

46 of 1973.

(xxii) "person resident outside India" shall have the same meaning assigned to it in clause (q) of section 2 of the Foreign Exchange Regulation Act, 1973;

(xxiii) "political party" means an association or body of individual citizens of India registered with the Election Commission under any law for the time being in force;

(xxiv) "prescribed" means prescribed by rules made under this Act;

(xxv) "previous year" in relation to any assessment year means any period not exceeding twelve months, ending on the 31st day of March immediately preceding the assessment year:

Provided that the previous year for the assessment year commencing on the 1st day of April, 1991, shall be the period commencing on the 20th day of March, 1990 and ending on the 31st day of March, 1991;

(xxvi) "principal officer", used with reference to a company or association of persons, means—

(a) the secretary and treasurer, manager, managing agent managing director or agent of the company or association; or

(b) any person connected with the management of the affairs of the company or association upon whom the Assessing Officer has served a notice of his intention of treating him as the principal officer thereof;

(xxvii) "property" includes any interest in property, movable or immovable;

(xxviii) "registered valuer" shall have the meaning assigned to it in clause (oaa) of section 2 of the Wealth-tax Act;

(xxix) "regular assessment" means the assessment made under sub-sections (5) and (7) of section 16;

(xxx) "relative" shall have the meaning assigned to it in clause (41) of section 2 of the Income-tax Act;

(xxxi) "resident",—

(a) in the case of an individual, means, if during that year he is a resident within the meaning of section 6 of the Income-tax Act, subject to the modification that reference in that section to India shall be construed as references to the territories to which this Act extends;

(b) in the case of a Hindu undivided family, firm or other association of persons, means, if during that year, the control and management of its affairs was situated wholly within the territories to which this Act extends;

(c) in the case of a company, means, if during the previous year,—

(i) it is a company formed and registered under the Companies Act, 1956, or is an existing company within the meaning of that Act; or

1 of 1956.

(ii) the control and management of that company was situated wholly in the territories to which this Act extends;

(d) in any other case, shall have the meaning assigned to it in section 6 of the Income-tax Act;

(xxxii) "tax" means gift-tax chargeable under the provisions of this Act;

(xxxiii) "taxable gifts" means gifts chargeable to gift-tax under this Act;

(xxxiv) "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes—

(a) the creation of a trust in property;

(b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;

(c) the exercise of a power of appointment (whether general, special or subject to any restrictions as to the persons in whose favour the appointment may be made) of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and

(d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person;

(xxv) "Valuation Officer" shall have the meaning assigned to it in clause (r) of section 2 of the Wealth-tax Act;

27 of 1957.

(xxvi) "Wealth-tax Act" means the Wealth-tax Act, 1957;

(xxvii) the expressions "Chief Commissioner", "Director General", "Commissioner", "Commissioner (Appeals)", "Director", "Deputy Director", "Deputy Commissioner", "Deputy Commissioner (Appeals)", "Assistant Director", "Assistant Commissioner", "Income tax Officer", "Tax Recovery Officer" and "Inspector of Income tax" shall have the meanings respectively assigned to them under section 2 of the Income-tax Act.

CHAPTER II

CHARGE OF GIFT-TAX AND GIFTS SUBJECT TO SUCH CHARGE

3. Subject to the other provisions contained in this Act, there shall be charged for every assessment year commencing on and from the 1st day of April, 1991, gift-tax in respect of the gifts, if any, received by a person during the previous year, at the rate or rates specified in the First Schedule.

Charge of
gift-tax.

4. (1) For the purposes of this Act,—

(a) where property is transferred otherwise than for adequate consideration, the amount by which the market value of the property at the date of the transfer exceeds the value of the consideration shall be deemed to be a gift received by a transferee;

(b) where property is transferred for a consideration which, having regard to the circumstances of the case, has not passed or is not intended to pass either in full or in part from the transferee to the transferor, the amount of the consideration which has not passed or is not intended to pass shall be deemed to be a gift received by the transferee;

(c) where there is a release, discharge, surrender, forfeiture or abandonment of any debt, contract or other actionable claim or of any interest in property by any person, the value of the release, discharge, surrender, forfeiture or abandonment to the extent to which it has not been found to the satisfaction of the Assessing Officer to have been bonafide, shall be deemed to be a gift received by the person in whose favour such release, discharge, surrender, forfeiture or abandonment, is made;

(d) where a person absolutely entitled to property causes or has caused the same to be vested in whatever manner in himself and any other person jointly without adequate consideration and such other person makes an appropriation from or out of the said property, the amount of the appropriation used for the benefit of the person making the appropriation or for the benefit of any

Gifts to
include
certain
transfers.

other person shall be deemed to be a gift received in his favour by the person who causes or has caused the property to be so vested;

(e) where a person who has an interest in property as a tenant for a term or for life or a remainderman surrenders or relinquishes his interest in the property or otherwise allows his interest to be terminated without consideration or for a consideration which is not adequate, the value of the interest so surrendered, relinquished or allowed to be terminated or, as the case may be, the amount by which such value exceeds the consideration received, shall be deemed to be a gift received by the person in whose favour such surrender, relinquishment or termination is made.

(2) Where in the case of an individual being a member of a Hindu undivided family, any property having been the separate property of the individual has been converted by the individual into property belonging to the family through the act of impressing such separate property with the character of property belonging to the family or throwing it into the common stock of the family (such property being hereafter in this sub-section referred to as the converted property), then, notwithstanding anything contained in any other provision of this Act or any other law for the time being in force, for the purpose of computation of the taxable gifts received by the individual, the individual shall be deemed to have made a gift of so much of the converted property as the members of the Hindu undivided family other than such individual would be entitled to, if a partition of the converted property had taken place immediately after such conversion.

Exemption in respect of certain gifts.

5. (1) Gift-tax shall not be charged under this Act in respect of gifts received by any person—

(i) of immovable property situate outside the territories to which this Act extends;

(ii) of movable property situate outside the territories to which this Act extends, unless the person receiving the gift—

(a) being an individual, is a citizen of India and is resident in the said territories; or

(b) not being an individual, is resident in the said territories, during the previous year in which the gift is received;

(iii) from a person resident outside India, out of the moneys standing to his credit in a Non-resident (External) Account in any bank in India in accordance with the provisions of the Foreign Exchange Regulation Act and any rules made thereunder;

(iv) in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Regulation Act and any rules made thereunder;

(v) from a non-resident Indian, being his relative, of property in the form of any foreign exchange asset as defined in clause (b) of section 115C of the Income-tax Act;

(vi) from a non-resident Indian, being his relative of property in the form of the bonds specified under sub-clause (iid) of clause (15) of section 10 of the Income-tax Act;

Provided that the exemption conferred by this clause shall be available only if the gift of such bonds is received after a period of three years from the date of their purchase;

Provided further that where the donor, who is a non-resident Indian in any previous year in which the bonds are acquired, becomes a resident in India in any subsequent year, the provisions of this clause shall apply in respect of the gifts of property referred to in this clause in such subsequent year or any year thereafter;

(vii) being any local authority or any authority referred to in clause (20A) of section 10 of the Income-tax Act;

(viii) being any institution or fund established or deemed to be established for a charitable purpose to which the provisions of section 80G of the Income-tax Act, apply;

(ix) (a) being such temple, mosque, gurdwara, church or other place as has been notified by the Central Government for the purposes of clause (b) of sub-section (2) of section 80G of the Income-tax Act; or

(b) by way of settlement on trust, of property, the income from which, according to the deed of settlement, is to be used exclusively in connection with the temple, mosque, gurdwara, church or other place specified therein and notified as aforesaid;

(x) on the occasion of the marriage of such person subject to a maximum of rupees one lakh in value;

(xi) under a will;

(xii) being an employee or the dependent of a deceased employee from a employer by way of bonus, gratuity or pension, to the extent to which the payment of such bonus, gratuity or pension is proved to the satisfaction of the Assessing Officer as being reasonable having regard to the circumstances of the case and has received solely in recognition of the services rendered by the employee;

(xiii) in the nature of any benefit, directly or indirectly, arising out of any expenditure incurred by a relative, on the maintenance or education or medical treatment of such person;

Provided that the donee is a dependent on the donor and the expenditure is actually incurred for the aforesaid purposes;

(xiv) from any person, for the purposes of medical treatment, to the extent to which such amount is actually spent on the medical treatment within the previous year or within such period as may be extended by the Commissioner and the amount not so utilised for

the aforesaid purpose is deposited in a public sector bank as defined in clause (23D) of section 10 of the Income-tax Act:

Provided that the donee is not a dependent relative of the donor;

(xv) being an Indian company from any other company in a scheme of amalgamation;

(xvi) being a political party;

(xvii) being a candidate, in connection with any election to any legislative, municipal or other public authority in India, to the extent to which the amount so received is not in excess of the limits, if any, fixed under any law for the time being in force relating to such elections or to the extent such amount is actually utilised in connection with the election, whichever is lower;

(xviii) any gift received in the form of National Saving Certificates (VI Issue) and National Saving Certificates (VII Issue) issued under the Government Savings Certificate Act, 1959;

46 of 1959.

(xix) any gift of property received in the form of Special Bearer Bonds, 1991 issued by the Central Government.

Value of
gifts
how
deter-
mined.

6. (1) Subject to the provisions of sub-section (2), the value of any property, other than cash, transferred by way of gift shall, for the purpose of this Act, be its value as on the date on which the gift was received and shall be determined in the manner laid down in the Second Schedule.

(2) Where a person receives a gift which is not revocable for a specified period, the value of the property received shall be the capitalised value of the income from such property during the period for which the gift is not revocable.

CHAPTER III

GIFT-TAX AUTHORITIES

Gift-tax
authori-
ties and
their
jurisdic-
tion.

7. (1) The Income-tax authorities specified in section 116 of the Income-tax Act shall be the gift-tax authorities for the purposes of this Act.

(2) Every such authority shall exercise the powers and perform the functions of a gift-tax authority under this Act in respect of any person within his jurisdiction.

(3) The jurisdiction of a gift-tax authority under this Act shall be the same as he has under the Income-tax Act by virtue of orders or directions issued under section 120 of that Act (including orders or directions assigning concurrent jurisdiction) or under any other provision of that Act.

(4) The gift-tax authority having jurisdiction in relation to a person who has no income assessable to income-tax under the Income-tax Act shall be the gift-tax authority having jurisdiction in respect of the area in which that person resides.

8. Section 118 of the Income-tax Act and any notification issued thereunder shall apply in relation to the control of gift-tax authorities as they apply in relation to the control of the corresponding income-tax authorities, except to the extent to which the Board may, by notification in the Official Gazette, otherwise direct in respect of any gift-tax authority.

Control of gift-tax authorities.

9. (1) The Board may, from time to time, issue such orders, instructions and directions to other gift-tax authorities as it may deem fit for the proper administration of this Act, and such authorities and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board.

Instructions to subordinate authorities.

(2) Notwithstanding anything contained in sub-section (1), the Board shall not issue any order, instruction or direction—

(a) so as to require any gift-tax authority to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Deputy Commissioner (Appeals) or Commissioner (Appeals) in the exercise of his appellate functions.

(3) Without prejudice to the generality of the foregoing power,—

(a) the Board may, if it considers it necessary or expedient so to do, for the purpose of proper and efficient management of the work of assessment and collection of revenue, issue, from time to time (whether by way of relaxation of any of the provisions of sections 12, 13, 16, 17, 19, 20 and 42 or otherwise), general or special orders in respect of any class of cases, setting forth directions or instructions (not being prejudicial to assessee's) as to the guidelines, principle or procedures to be followed by other gift-tax authorities in the work relating to assessment or collection of revenue or the initiation of proceedings for the imposition of penalties and any such order may, if the Board is of opinion that it is necessary in the public interest so to do, be published and circulated in the prescribed manner for general information;

(b) the Board may, if it considers it desirable or expedient so to do for avoiding genuine hardship in any case or class of cases, by general or special order, authorise any gift-tax authority, not being a Deputy Commissioner (Appeals) or Commissioner (Appeals) to admit an application or claim for any exemption or refund or any other relief under this Act after the expiry of the period specified by or under this Act for making such application or claim and deal with the same on merits in accordance with law.

10. (1) The provisions of sections 124 and 127 of the Income-tax Act shall, so far as may be, apply for the purposes of this Act as they apply for the purposes of the Income-tax Act, subject to the modifications specified in sub-section (2).

Jurisdiction of Assessing Officers and power to transfer cases.

(2) The modifications referred to in sub-section (1) shall be the following, namely:—

(a) in section 124 of the Income-tax Act,—

(i) in sub-section (3), references to the provisions of the Income-tax Act shall be construed as references to the corresponding provisions of the Gift-tax Act, 1990;

(ii) sub-section (5) shall be omitted;

(b) in section 127 of the Income-tax Act, in the *Explanation* below sub-section (4), references to proceedings under the Income-tax Act shall be construed as including references to proceedings under the Gift-tax Act, 1990.

Power of
Chief
commis-
sioner
or Com-
missioner
and of
Deputy
Commis-
sioner to
make
enquiries.

11. The Chief Commissioner or Commissioner and the Deputy Commissioner shall be competent to make any enquiry under this Act, and for this purpose, shall have all the powers that an Assessing Officer has under this Act in relation to the making of enquiries.

CHAPTER IV

ASSESSMENT

Return
of
gifts.

12. (1) Every person who during a previous year has received any taxable gifts, or is assessable in respect of the taxable gifts received by any other person under this Act, which, in either case, exceeded the maximum amount not chargeable to gift-tax, shall, on or before the 30th day of June of the corresponding assessment year, furnish a return of such gifts in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed.

(2) Notwithstanding anything contained in any other provision of this Act, a return, not being a return furnished in response to a notice under section 17, which shows the amount of taxable gifts below the maximum amount which is not chargeable to tax shall be deemed never to have been furnished.

Return
after due
date and
amend-
ment of
return.

13. If any person has not furnished a return within the time allowed under sub-section (1) of section 12 or by a notice issued under clause (i) of sub-section (6) of section 16, or having furnished amendment of a return discovers any omission or wrong statement therein, he may furnish a return or a revised return, as the case may be, at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Return
by whom
to be
signed.

14. The return made under section 12 or section 13 shall be signed and verified—

(a) in the case of an individual,—

(i) by the individual himself;

(ii) where he is absent from India, by the individual himself or by some person duly authorised by him in this behalf;

(iii) where he is mentally incapacitated from attending to his affairs, by his guardian or any other person competent to act on his behalf; and

(iv) where, for any other reason, it is not possible for the individual to sign the return, by any person duly authorised by him in this behalf:

Provided that in a case referred to in sub-clause (ii) or sub-clause (iv), the person signing the return holds a valid power of attorney from the individual to do so, which shall be attached to the return;

(b) in the case of a Hindu undivided family, by the karta, and where the karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family;

(c) in the case of a company, by the managing director thereof or where for any unavoidable reason such managing director is not able to sign and verify the return, or where there is no managing director, by any director thereof:

Provided that where the company is not resident in India, the return may be signed and verified by a person who holds a valid power of attorney from such company to do so, which shall be attached to the return:

Provided further that,—

(a) where the company is being wound up, whether under the orders of the Court or otherwise, or where any person has been appointed as the receiver of any assets of the company, the return shall be signed and verified by the liquidator referred to in sub-section (1) of section 178 of the Income-tax Act;

(b) where the management of the company has been taken over by the Central Government or any State Government under any law, the return of the company shall be signed and verified by the principal officer thereof;

(c) in the case of a firm, by the managing partner thereof or where for any unavoidable reason such managing partner is not able to sign and verify the return, or where there is no managing partner as such, by any partner thereof, not being a minor;

(d) in the case of any other association, by any member of the association or the principal officer thereof; and

(e) in the case of any other person, by that person or by some person competent to act on his behalf.

15. (1) Where any tax is payable on the basis of any return furnished under section 12 or under section 13 or in response to a notice under clause (i) of sub-section (6) of section 16 or under section 17, after taking into account the amount of tax, if any, already paid under any provision of this Act, the assessee shall be liable to pay such tax, together with

Self-
assess-
ment.

interest payable under any provision of this Act for any delay in furnishing the return, before furnishing the return and the return shall be accompanied by proof of payment of such tax and interest.

Explanation.—Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax and interest as aforesaid, the amount so paid shall first be adjusted towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

(2) After the regular assessment under section 16 has been made, any amount paid under sub-section (1) shall be deemed to have been paid towards such regular assessment.

(3) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid and all the provisions of this Act shall apply accordingly.

Assess-
ment.

16. (1) (a) Where a return has been made under section 12 or section 13 or in response to a notice under clause (i) of sub-section (6),—

(i) if any tax or interest is found due on the basis of such return **after adjustment of any amount paid by way of tax or interest, an intimation shall be sent to the assessee specifying the sum so payable,** and such intimation shall be deemed to be a notice issued under section 38 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due on the basis of such return, it shall be granted to the assessee:

Provided that in computing the tax or interest payable by, or refundable to the assessee the following adjustments shall be made in the taxable gifts declared in the return, namely:—

(i) any arithmetical errors in the return, accounts or documents accompanying it shall be rectified;

(ii) any exemption which, on the basis of the information available in such return, accounts or documents, **is prima facie admissible** but which is not claimed in the return, shall be allowed;

(iii) any exemption claimed in the return, which, on the basis of the information available in such return, accounts or documents, is **prima facie inadmissible**, shall be disallowed:

Provided further that where adjustments are made under the first proviso, an intimation shall be sent to the assessee, notwithstanding that no tax or interest is found due from him after making the said adjustments:

Provided also that an intimation for any tax or interest due under **this clause shall not be sent after the expiry of two years from the end** of the assessment year in which the gifts were first assessable.

(b) Where as a result of an order made under sub-section (5) or sub-section (7) of this section or section 17 or section 27 or section 28 or section 29 or section 31 or section 33 or section 42 relating to any earlier

assessment year and passed subsequent to the filing of the return referred to in clause (a), there is any variation in the exemption claimed in the return, and as a result of which,—

(i) if any tax or interest is found due, an intimation shall be sent to the assessee specifying the sum so payable, and such intimation shall be deemed to be a notice of demand issued under section 38 and all the provisions of this Act shall apply accordingly; and

(ii) if any refund is due, it shall be granted to the assessee:

Provided that an intimation for any tax or interest due under this clause shall not be sent after the expiry of four years from the end of the financial year in which any such order was passed.

(2) (a) Where in the case of any person, the taxable gift, as a result of the adjustments made under the first proviso to clause (a) of sub-section (1), exceeds the taxable gift declared in the return by any amount, the Assessing Officer shall,—

(i) further increase the amount of tax payable under sub-section (1) by an additional gift-tax calculated at the rate of twenty per cent of the tax payable on such excess amount and specify the additional gift-tax in the intimation to be sent under sub-clause (i) of clause (a) of sub-section (1);

(ii) where any refund is due under sub-section (1), reduce the amount of such refund by an amount equivalent to the additional gift-tax calculated under sub-clause (i).

(b) Where as a result of an order under section 27 or section 28 or section 29 or section 31 or section 33 or section 42, the amount on which additional gift-tax is payable under clause (a) has been increased or reduced, as the case may be, the additional gift-tax shall be increased or reduced accordingly, and,—

(i) in a case where the additional gift-tax is increased, the Assessing Officer shall serve on the assessee a notice of demand under section 38;

(ii) in a case where the additional gift-tax is reduced, the excess amount paid, if any, shall be refunded.

Explanation.—For the purposes of this sub-section, “tax payable on such excess amount” means the difference between the tax on the taxable gift and the tax that would have been chargeable had such taxable gift been reduced by the amount of adjustments.

(3) Where an assessee furnishes a revised return under section 13 after the issue of an intimation, or the grant of refund, if any, under sub-section (1) of this section, the provisions of sub-sections (1) and (2) of this section shall apply in relation to such revised return and—

(i) the intimation already sent for any gift-tax, additional gift-tax or interest shall be amended on the basis of the said revised

return and where any amount payable by way of gift-tax, additional gift-tax or interest specified in the said intimation has already been paid by the assessee then, if any such amendment has the effect of—

(a) enhancing the amount already paid, the intimation amended under this clause shall be sent to the assessee specifying the excess amount payable by him and such intimation shall be deemed to be a notice of demand issued under section 38 and all the provisions of this Act shall apply accordingly;

(b) reducing the amount already paid, the excess amount paid shall be refunded to the assessee;

(ii) the amount of the refund already granted shall be enhanced or reduced on the basis of the said revised return and where the amount of refund already granted is—

(a) enhanced, only the excess amount of refund due to the assessee shall be paid to him;

(b) reduced, the excess amount so refunded shall be deemed to be the tax payable by the assessee and an intimation shall be sent to the assessee specifying the amount so payable, and such intimation shall be deemed to be a notice of demand issued under section 38 and all the provisions of this Act shall apply accordingly:

Provided that an assessee, who has furnished a revised return under section 13 after the service upon him of the intimation under sub-section (1) of this section, shall be liable to pay additional gift-tax in relation to the adjustments made under the first proviso to clause (a) of sub-section (1) and specified in the said intimation, whether or not he has made the said adjustments in the revised return.

(4) Where a return has been made under section 12 or section 13 or in response to a notice under clause (i) of sub-section (6) of this section, the Assessing Officer shall, if he considers it necessary or expedient to ensure that the assessee has not omitted to disclose any taxable gift or has not understated the amount or value of any such gift or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend at the office of the Assessing Officer or to produce, or cause to be produced there, any evidence on which the assessee may rely in support of the return:

Provided that no notice under this sub-section shall be served on the assessee after the expiry of the financial year in which the return is furnished or on the expiry of six months from the end of the month in which the return is furnished, whichever is later.

(5) On the date specified in the notice issued under sub-section (4) or, as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer

may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by **order in writing, assess the value of taxable gifts received by the assessee** and determine the sum payable by him on the basis of such assessment.

(6) For the purposes of making an assessment under this Act, the Assessing Officer may serve, on any person who has made a return under section 12 or section 13 or in whose case the time allowed under sub-section (1) of section 12 for furnishing the return has expired, a notice requiring him, on a date to be specified therein,—

(i) **where such person has not made a return within the time** allowed under sub-section (1) of section 12, to furnish a return of the **taxable gifts received by him or of the taxable gifts received by any other person in respect of which he is assessable under this Act during** the previous year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed, or

(ii) to produce or cause to be produced such accounts, records or other documents as the Assessing Officer may require.

(7) If any person,—

(a) fails to make the return required under sub-section (1) of section 12 and has not made a return or a revised return under section 13, or

(b) fails to comply with all the terms of a notice issued under sub-section (4) or sub-section (6),

the Assessing Officer, after taking into account all relevant material which he has gathered, shall, after giving such person an opportunity of being heard, estimate the value of taxable gifts to the best of his judgment and determine the sum payable by such person on the basis of such assessment:

Provided that such opportunity shall be given by the Assessing Officer by serving a notice calling upon the person to show cause, on a date and time to be specified in the notice, why the assessment should not be completed to the best of his judgment:

Provided further that it shall not be necessary to give such opportunity in a case where a notice under sub-section (6) has been issued prior to the making of the assessment under this sub-section.

(8) Notwithstanding anything contained in section 6, for the purpose of making an assessment under this Act, where under the provisions of section 6 read with the Second Schedule, the fair market value of any property transferred by way of gift is to be taken into account in such assessment. The Assessing Officer may refer the valuation of such property to the Valuation Officer,—

(a) in a case, where the value of the property as returned in accordance with the estimate made by a registered valuer, if the

Assessing Officer is of opinion that the value so returned is less than its fair market value;

(b) in any other case, if the Assessing Officer is of opinion—

(i) that the fair market value of the property exceeds the value of the property as returned by more than such percentage of the value of the property as returned or by more than such amounts as may be prescribed in this behalf; or

(ii) that having regard to the nature of the property and other relevant circumstances, it is necessary so to do,

and where any such reference is made, the provisions of sub-sections (2), (3), (4), (5) and (6) of section 16A, clause (h) of sub-section (1) and sub-sections (3A) and (4) of section 23, sub-section (5) of section 24, section 34AA, section 35 and section 37 of the Wealth-tax Act, shall with the necessary modifications, apply in relation to such reference as they apply in relation to a reference made by the Assessing Officer under sub-section (1) of section 16A of that Act.

(9) Where a regular assessment under sub-section (5) or sub-section (7) is made,—

(a) any tax or interest paid by the assessee under sub-section ment;

(1) shall be deemed to have been paid towards such regular assess-

(b) if no refund is due on regular assessment or the amount refunded under sub-section (1) exceeds the amount refundable on regular assessment, the whole or the excess amount so refunded shall be deemed to be tax payable by the assessee and the provisions of this Act shall apply accordingly.

Gift
escaping
assess-
ment.

17. (1) If the Assessing Officer has reasons to believe that the taxable gifts in respect of which any person is assessable under this Act (whether received by him or by any other person) have escaped assessment for any assessment year (whether by reason of under-assessment or assessment at too low a rate or otherwise), he may, subject to the other provisions of this section and section 18, serve on such person a notice requiring him to furnish with such period not being less than thirty days, as may be specified in the notice, a return in the prescribed form and verified in the prescribed manner, setting forth the taxable gifts received by him or by such other person during the previous year mentioned in the notice, in respect of which he is assessable, along with such other particulars as may be required by the notice, and may proceed to assess or re-assess such gifts and also any other taxable gifts in respect of which such person is assessable, which have escaped assessment and which come to his notice subsequently in the course of the proceedings under this section for the assessment year concerned (hereafter in this section referred to as the relevant assessment year); and the provisions of this Act shall, so far as may be, apply as if the return were a return required under section 12:

Provided that where an assessment under sub-section (5) of section 16 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any taxable gift chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 12 or section 13 or in response to a notice issued under sub-section (6) of section 16 or this section or to disclose fully and truly all material facts necessary for his assessment for that assessment year:

Provided further that the Assessing Officer shall, before issuing any notice under this sub-section, record his reasons for doing so.

Explanation.—Production before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

(2) No notice under sub-section (1) shall be issued for the relevant assessment year,—

(a) in a case where an assessment under sub-section (5) of section 16 or sub-section (1) of this section has been made for such assessment year,—

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees one lakh or more for that year;

(b) in any other case,—

(i) if four years have elapsed from the end of the relevant assessment year, unless the case falls under sub-clause (ii) or sub-clause (iii);

(ii) if four years, but not more than seven years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees twenty-five thousand or more for that year;

(iii) if seven years, but not more than ten years, have elapsed from the end of the relevant assessment year, unless the value of taxable gifts chargeable to tax which have escaped assessment amounts to or is likely to amount to rupees fifty thousand or more for that year.

Explanation.—For the purposes of sub-section (1) and sub-section (2), the following shall also be deemed to be cases where taxable gifts chargeable to tax have escaped assessment, namely:—

(a) where no return of taxable gifts has been furnished by the assessee although the taxable gifts received by him or the taxable gift received by any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to gift-tax;

(b) where a return of taxable gifts has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the amount or value of the taxable gifts or has claimed excessive exemption in the return.

(3) (a) In a case where an assessment under sub-section (5) of section 16 or sub-section (1) of this section has been made for the relevant assessment year, no notice shall be issued under sub-section (1) by an Assessing Officer, who is below the rank of Assistant Commissioner, unless the Deputy Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice;

Provided that, after the expiry of four years from the end of the relevant assessment year, no such notice shall be issued unless the **Chief Commissioner or Commissioner is satisfied**, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.

(b) In a case, other than a case falling under clause (a), no notice shall be issued under sub-section (1) by an Assessing Officer, who is below the rank of Deputy Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the Deputy Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.

(4) Nothing contained in this section limiting the time within which any proceedings for assessment or reassessment may be commenced shall apply to an assessment or reassessment to be made on the assessee or any person in consequence of or to give effect to any finding or direction contained in an order under section 27, section 28, section 29, section 31 or section 33 or by a court in any proceedings under any other law.

Time
limit for
completion of
assessment and
reassessment.

18. (1) No order of assessment shall be made under section 16 at any time after the expiry of two years from the end of the assessment year in which the gifts were first assessable.

(2) No order of assessment or reassessment shall be made under section 17 after the expiry of two years from the end of the financial year in which the notice under sub-section (1) of that section was served.

(3) Notwithstanding anything contained in sub-sections (1) and (2), an order of fresh assessment in pursuance of an order passed under

section 27, section 28, or section 29, setting aside or cancelling an assessment, may be made at any time before the expiry of two years from the end of the financial year in which the order under section 27 or section 28 is received by the Chief Commissioner or Commissioner or, as the case may be, the order under section 29 is passed by the Chief Commissioner or Commissioner.

(4) The provisions of sub-sections (1) and (2) shall not apply to the assessment or reassessment made on the assessee in consequence of, or to give effect to, any finding or direction contained in an order under section 27, section 28, section 29, section 31 or section 33 or in an order of any court in a proceeding otherwise than by way of appeal or reference under this Act and such assessment or reassessment may, subject to the provisions of sub-section (3), be completed at any time.

Explanation 1.—In computing the period of limitation for the purposes of this section—

(i) the time taken in reopening the whole or any part of the proceeding or in giving an opportunity to the assessee to be reheard under the proviso to section 51, or

(ii) the period during which the assessment proceeding is stayed by an order or injunction of any court,

shall be excluded.

Explanation 2.—Where, by an order referred to in sub-section (4), any gift is excluded from the taxable gifts for an assessment year in respect of an assessee, then, an assessment of such gift for another assessment year shall, for the purposes of sub-section (4) of section 17 and this section, be deemed to be one made in consequence of, or to give effect to, any finding or direction contained in the said order.

19. (1) Where a return of gifts for any assessment year under sub-section (1) of section 12, or section 13, or in response to a notice under clause (i) of sub-section (6) of section 16, is furnished after the 30th day of June of such year, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the 1st day of July of the assessment year and,—

Interest
for de-
faults in
furnish-
ing
return
of gifts.

(a) where the return is furnished after the 30th day of June ending on the date of furnishing of the return; or

(b) where no return has been furnished, ending on the date of completion of the assessment under sub-section (7) of section 16,

on the amount of tax payable on the taxable gifts as determined under sub-section (1) of section 16 or on regular assessment.

Explanation 1.—In this sub-section, "tax payable on the taxable gifts as determined under sub-section (1) of section 16" shall not include the additional gift-tax, if any, payable under section 16.

Explanation 2.—Where in relation to an assessment year, the assessment is made for the first time under section 17, the assessment so made shall be regarded as a regular assessment for the purposes of this section.

Explanation 3.—In this sub-section, “tax payable on the taxable gifts as determined under sub-section (1) of section 16 or on regular assessment” shall, for the purposes of computing the interest payable under section 15, be deemed to be tax payable on the taxable gifts as declared in the return.

(2) The interest payable under sub-section (1) shall be reduced by the interest, if any, paid under section 15 towards the interest chargeable under this section.

(3) Where the return of gifts for any assessment year, required by a notice under sub-section (1) of section 17 issued after the determination of taxable gifts under sub-section (1) of section 16 or after the completion of an assessment under sub-section (5) or sub-section (7) of section 16 or section 17, is furnished after the expiry of the time allowed under such notice, or is not furnished, the assessee shall be liable to pay simple interest at the rate of two per cent. for every month or part of a month comprised in the period commencing on the day immediately following the expiry of the time allowed as aforesaid, and,—

(a) where the return is furnished after the expiry of the time aforesaid, ending on the date of furnishing the return; or

(b) where no return has been furnished, ending on the date of completion of the reassessment under section 17,

on the amount by which the tax on the taxable gifts determined on the basis of such reassessment exceeds the tax on the taxable gifts as determined under sub-section (1) of section 16 or on the basis of the earlier assessment aforesaid.

(4) Where, as a result of an order under section 27 or section 28 or section 29 or section 31 or section 33 or section 42, the amount of tax on which interest was payable under this section has been increased or reduced, as the case may be, the interest shall be increased or reduced accordingly, and,—

(i) in a case where the interest is increased, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be a notice under section 38 and the provisions of this Act shall apply accordingly, and

(ii) in a case where the interest is reduced, the excess interest paid, if any, shall be refunded.

20. (1) If the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals), Chief Commissioner or Commissioner or Appellate Tribunal, in the course of any proceedings under this Act, is satisfied that any person—

(a) has failed to comply with a notice under sub-section (4) or sub-section (6) of section 16; or

(b) has concealed the particulars of any gift or deliberately furnished inaccurate particulars thereof,

Penalty for failure to furnish returns, to comply with notices and concealment of gifts, etc.

he or it may, by order in writing, direct that such person shall pay by way of penalty—

(i) in the cases referred to in clause (a), in addition to the amount of gift-tax payable by him, a sum which shall not be less than one thousand rupees but which may extend to twenty-five thousand rupees for each such failure;

(ii) in the cases referred to in clause (b), in addition to any gift-tax payable by him, a sum which shall not be less than twenty per cent. but which shall not exceed one and half times the amount of the tax if any, which would have been avoided if the return made by such person had been accepted as correct:

Provided that in the cases referred to in clause (a), no penalty shall be imposable if the person proves that there was a reasonable cause for the failure referred to in that clause.

Explanation.—Where any adjustment is made in the taxable gifts declared in the return under the first proviso to clause (a) of sub-section (1) of section 16 and additional gift-tax charged under that section, the provisions of this sub-section shall not apply in relation to the adjustments so made.

(2) No order imposing a penalty under sub-section (1) shall be made unless the assessee has been heard or has been given a reasonable opportunity of being heard.

(3) No order imposing a penalty under sub-section (1) shall be made,—

(i) by the Income-tax Officer, where the penalty exceeds ten thousand rupees;

(ii) by the Assistant Commissioner, where the penalty exceeds twenty thousand rupees;

except with the prior approval of the Deputy Commissioner.

(4) A Deputy Commissioner (Appeals), a Commissioner (Appeals), a Chief Commissioner or Commissioner or the Appellate Tribunal on making an order under this section imposing a penalty, shall forthwith send a copy of the same to the Assessing Officer.

(5) No order imposing a penalty under this section shall be passed—

(i) in a case where the assessment to which the proceedings for imposition of penalty relate is the subject-matter of an appeal to the Deputy Commissioner (Appeals) or Commissioner (Appeals) under section 27 or an appeal to the Appellate Tribunal under sub-section (2) of section 28, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or, as the case

may be, the Appellate Tribunal is received by the Chief Commissioner or Commissioner, whichever is later;

(ii) in a case where the relevant assessment is the subject-matter of revision under sub-section (2) of section 29, after the expiry of six months from the end of the month in which such order of revision is passed;

(iii) in any other case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later.

Explanation.—In computing the period of limitation for the purposes of this section,—

(i) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 51, and

(ii) any period during which a proceeding under this section for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded.

Penalty
for
failure to
answer
questions,
sign
state-
ments,
furnish
informa-
tion,
allow
inspec-
tion, etc

21. (1) If a person,—

(a) being legally bound to state the truth of any matter touching the subject of his assessment, refuses to answer any question put to him by a gift-tax authority in the exercise of his powers under this Act; or

(b) refuses to sign any statement made by him in the course of any proceedings under this Act, which a gift-tax authority may legally require him to sign; or

(c) to whom a summons is issued under sub-section (1) of section 49, either to attend to give evidence or produce books of account or other documents at a certain place and time omits to attend or produce the books of account or documents at the place and time.

he shall pay, by way of penalty, a sum which shall not be less than five hundred rupees but which may extend to ten thousand rupees for each such default or failure:

Provided that no penalty shall be imposable under clause (c) if the person proves that there was reasonable cause for the said failure.

(2) If a person fails to furnish in due time any statement or information which such person is bound to furnish to the Assessing Officer under section 50, he shall pay, by way of penalty, a sum which shall not be less than one hundred rupees but which may extend to two hundred rupees for every day during which the failure continues:

Provided that no penalty shall be imposable under this sub-section if the person proves that there was reasonable cause for the said failure.

(3) Any penalty imposable under sub-section (1) or sub-section (2) shall be imposed,—

(a) in a case where the contravention, failure or default in respect of which such penalty is imposable occurs in the course of any proceeding before a gift-tax authority not lower in rank than a Deputy Director or a Deputy Commissioner, by such gift-tax authority;

(b) in any other case, by the Deputy Director or the Deputy Commissioner.

(4) No order under this section shall be passed by any gift-tax authority referred to in sub-section (3) unless the person on whom penalty is proposed to be imposed has been heard or has been given a reasonable opportunity of being heard in the matter by such authority.

Explanation.—In this section, “gift-tax authority” includes a Director General, Director, Deputy Director, Assistant Director or Valuation Officer while exercising the powers vested in a court under the Code of Civil Procedure, 1908 when trying a suit in respect of the matters specified in sub-section (1) of section 49.

5 of 1908.

CHAPTER V

LIABILITY TO ASSESSMENT IN SPECIAL CASES

22. (1) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge, the gift-tax determined as payable by such person, or any sum which would have been payable by him under this Act, if he had not died.

Tax of deceased person payable by legal representative.

(2) Where a person dies without having furnished a return under section 12 or after having furnished a return which the Assessing Officer has reason to believe to be incorrect or incomplete, the Assessing Officer may make an assessment of the value of the taxable gifts received by such person and determine the gift-tax payable by him, and for this purpose may, by the issue of the appropriate notice which would have had to be served upon the deceased person if he had survived, require from the executor, administrator or other legal representative of the deceased person any accounts, documents, or other evidence which might, under the provisions of section 16, have been required from the deceased person.

(3) The provisions of sections 12, 13 and 17 shall apply to an executor, administrator or, other legal representative as they apply to any person referred to in those sections.

23. (1) Notwithstanding anything contained in section 3, when it appears to the Assessing Officer that any individual may leave India during the current assessment year, or shortly after its expiry and that he has no present intention of returning to India, the gifts received by such individual during the period from the expiry of the previous year for that assessment year up to the probable date of his departure from India, shall be chargeable to gift-tax in that assessment year.

Assessment of persons leaving India.

(2) The taxable gifts received in each completed previous year or part of any previous year included in such period shall be chargeable to gift-tax at the rate or rates specified in the First Schedule, and separate assessments shall be made in respect of each such completed previous year or part of any previous year.

(3) The Assessing Officer may estimate the value of the gifts received by such individual during such period or any part thereof, where it cannot be readily determined in the manner provided in this Act.

(4) For the purpose of making an assessment under sub-section (1), the Assessing Officer may serve a notice upon such individual requiring him to furnish, within such time, not being less than seven days, as may be specified in the notice, a return in the same form and verified in the same manner as a return under sub-section (1) of section 12, giving particulars of the gifts received by him during each completed previous year comprised in the period referred to in sub-section (1) and during any part of the previous year comprised in that period; and the provisions of this Act shall, so far as may be, and subject to the provisions of this section, apply as if the notice were a notice issued under clause (i) of sub-section (6) of section 16.

(5) The gift-tax chargeable under this section shall be in addition to the tax, if any, chargeable under any other provision of this Act.

(6) Where the provisions of sub-section (1) are applicable, any notice issued by the Assessing Officer under clause (i) of sub-section (6) of section 16 or under section 17 in respect of any gift-tax chargeable under any other provisions of this Act may, notwithstanding anything contained in clause (1) of sub-section (6) of section 16 or section 17, as the case may be, require the furnishing of the return by such individual within such period, not being less than seven days, as the Assessing Officer may think proper.

Assess-
ment of
a minor,
lunatic
or idiot.

24. (1) Where the gift of any property is made in favour of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or manage the property on behalf of such minor, lunatic or idiot shall be the representative assessee.

(2) Every representative assessee shall be deemed to be an assessee for the purposes of this Act.

(3) Every representative assessee, as regards the gift in respect of which he is a representative assessee, shall be subject to the same duties, responsibilities and liabilities as if the gift were gift received by him, and shall be liable to assessment in his own name in respect of that gift; but any such assessment shall be deemed to be made upon him in his representative capacity only, and the tax shall be levied upon and recovered from him in like manner and to the same extent as it would be leviable upon and recoverable from the person represented by him.

(4) Every representative assessee who, as such, pays any sum under this Act, shall be entitled to recover the sum so paid from the person on whose behalf it is paid, or to retain out of any moneys that may be in his possession or as may be received by him in his representative capacity an amount equal to the sum so paid.

(5) Any representative assessee, or any person who apprehends that he may be assessed as a representative assessee, may retain out of any money payable by him to the person on whose behalf he is liable to pay tax (hereinafter in this section referred to as the principal), a sum equal to his estimated liability under this Act, and in the event of any disagreement between the principal and such representative assessee or person as to the amount to be so retained, such representative assessee or person may secure from the Assessing Officer a certificate stating the amount to be so retained pending final settlement of the liability, and the certificate so obtained shall be his warrant for retaining that amount.

(6) The amount so recoverable from such representative assessee or person at the time of final settlement shall not exceed the amount specified in such certificate, except to the extent to which such representative assessee or person may at such time have in his hands additional assets of the principal.

(7) Where any person is, in respect of any gift, assessable under this Act in the capacity of a representative assessee, he shall not, in respect of that gift, be assessed under any other provision of this Act.

25. (1) Where,—

(i) at the time of making an assessment, it is brought to the notice of the Assessing Officer that a partition has taken place among the members of a Hindu undivided family, and the Assessing Officer, after enquiry, is satisfied that the joint family property has been partitioned among the various members or groups of members in definite portions, he shall record an order to that effect and he shall make assessments on the value of the taxable gifts received by the family as such as if no partition had taken place and each member or group of members shall be liable jointly and severally for the tax assessed on the value of the taxable gifts made by the joint family as such:

Liability after partition of a Hindu undivided family and in the case of discontinued firm or association of persons.

Provided that where the Assessing Officer is not so satisfied, he may, by order, declare that such family shall be deemed for the purposes of this Act to continue to be a Hindu undivided family;

(ii) a firm or association of persons liable to pay gift-tax has been discontinued or dissolved, the Assessing Officer shall determine the gift-tax payable by the firm or association of persons as such as if no such discontinuance or dissolution had taken place and every person who was at the time of such discontinuance or dissolution, a partner of the firm or a member of the association, as the case may be, shall be jointly and severally liable for the amount of tax or penalty payable, and all the provisions of Chapter VII, so far as may be, shall apply to any such assessment or imposition of penalty.

(2) If the Assessing Officer, the Deputy Commissioner (Appeals), the Commissioner (Appeals) or the Appellate Tribunal in the course of any proceeding under this Act in respect of any such firm or other association of persons as is referred to in clause (ii) of sub-section (1) is satisfied that the firm or association is guilty of any of the acts specified in

clause (a) or clause (b) or clause (c) of sub-section (1) of section 20, he or it may impose or direct the imposition of a penalty in accordance with the provisions of that section.

Company
in liqui-
dation

26. (1) Every person—

(a) who is the liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

(b) who has been appointed the receiver of any assets of the company,

(hereinafter referred to as the liquidator) shall, within thirty days after he has become such liquidator, give notice of his appointment as such to the Assessing Officer who is entitled to assess the taxable gifts received by the company.

(2) The Assessing Officer shall, after making such enquiries or calling for such information as he may deem fit, notify to the liquidator within three months from the date on which he receives notice of the appointment of the liquidator the amount which, in the opinion of the assessing officer, would be sufficient to provide for any tax which is then, or is likely thereafter to become, payable by the company.

(3) The liquidator—

(a) shall not, without the leave of the Chief Commissioner or Commissioner, part with any of the assets of the company or the properties in his hands until he has been notified by the Assessing Officer under sub-section (2); and

(b) on being so notified, shall set aside an amount, equal to the amount notified and until he so sets aside such amount, shall not part with any of the assets of the company or the properties in his hands;

Provided that nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties for the purpose of the payment of the tax payable by the company or for making any payment to secure creditors whose debts are entitled under law to priority of payment over debts due to Government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Chief Commissioner or Commissioner reasonable.

(4) If the liquidator fails to give the notice in accordance with sub-section (1) or fails to set aside the amount as required by sub-section (3) or parts with any of the assets of the company or the properties in his hands in contravention of the provisions of that sub-section; he shall be personally liable for the payment of the tax which the company would be liable to pay:

Provided that if the amount of any tax payable by the company is notified under sub-section (2); the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there are more liquidators than one, the obligations and liabilities attached to the liquidator under this section shall attach to all the liquidators jointly and severally.

CHAPTER VI

APPEALS, REVISIONS AND REFERENCES

27. (1) Subject to the provisions of sub-section (2), any persons—

(a) objecting to the value of taxable gifts determined under this Act; or

(b) objecting to the amount of gift-tax determined as payable by him under this Act; or

(c) denying his liability to be assessed under this Act; or

(d) objecting to any penalty imposed by the Assessing Officer under section 20; or

(e) objecting to any order of the Assessing Officer under clause (i) of sub-section (1) of section 25; or

(f) objecting to any penalty imposed by the Assessing Officer under sub-section (1) of section 221 of the Income-tax Act as applied under section 40 for the purposes of gift-tax; or

(g) objecting to an order of the Assessing Officer under section 42 having the effect of enhancing the assessment or reducing a refund or an order refusing to allow the claim made by the assessee under that section.

Appeal
to the
Deputy
Commissioner
(Appeals),
Commissioner
(Appeals),
from
orders of
Assessing
Officers.

may appeal to the Deputy Commissioner (Appeals) against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner:

Provided that no appeal shall lie under clause (f) unless the tax has been paid before the appeal is filed.

(2) Notwithstanding anything contained in sub-section (1), any person—

(a) objecting to the value of taxable gifts determined under this Act or objecting to the amount of gift-tax determined as payable by him or denying his liability to be assessed under this Act where the value of taxable gifts determined on assessment exceeds two lakh rupees; or

(b) objecting to any assessment or order referred to in clauses (a) to (g) (both inclusive) of sub-section (1), where such assessment or order has been made by the Deputy Commissioner in exercise of the powers or functions conferred on or assigned to him under section 7 or section 10; or

(c) objecting to any penalty imposed under sub-section (1) of section 20 with the previous approval of the Deputy Commissioner as specified in sub-section (3) of that section; or

(d) objecting to any penalty imposed by the Deputy Director or the Deputy Commissioner under section 21; or

(e) objecting to any order made by an Assessing Officer in the case of such persons or classes of persons as the Board may, having regard to the nature of the cases, the complexities involved and other relevant considerations, direct,

may appeal to the Commissioner (Appeals) against the assessment or order, as the case may be, in the prescribed form and verified in the prescribed manner:

Provided that no appeal shall lie under clause (b) of this sub-section against any order referred to in clause (f) of sub-section (1) unless the tax has been paid before the appeal is filed.

(3) Notwithstanding anything contained in sub-section (1), the Board or the Director General or the Chief Commissioner or the Commissioner, if so authorised by the Board, may by order in writing, transfer an appeal which is pending before a Deputy Commissioner (Appeals) and any matter arising out of or connected with such appeal and which is so pending, to the Commissioner (Appeals), if the Board or as the case may be, the Director General, the Chief Commissioner or the Commissioner (at the request of the appellant or otherwise) is satisfied that it is necessary or expedient so to do having regard to the nature of the case, the complexities involved and other relevant considerations and the Commissioner (Appeals) may proceed with such appeal or matter from the stage at which it was before it was so transferred:

Provided that the appellant may demand that before proceeding further with the appeal or matter, the previous proceeding or any part thereof be reopened or that he be reheard.

(4) An appeal shall be presented within thirty days of the receipt of the notice of demand relating to the assessment or penalty objected to, or the date on which any order objected to, is communicated to him, but the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) may admit an appeal after the expiration of the period aforesaid if he is satisfied that the appellant had sufficient cause for not presenting the appeal within that period.

(5) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) shall fix a day and place for the hearing of the appeal and may from time to time adjourn the hearing.

(6) The Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) may,—

(a) at the hearing of an appeal, allow an appellant to go into any ground of appeal, not specified in the grounds of appeal;

(b) before disposing of an appeal, make such further inquiry as he thinks fit or cause further inquiry to be made by the Assessing Officer.

(7) In disposing of an appeal, the Deputy Commissioner (Appeals) **or, as the case may be, the Commissioner (Appeals), may pass such order** as he thinks fit which may include an order enhancing the amount of gift-tax determined or penalty imposed:

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(8) In disposing of an appeal, the Deputy Commissioner (Appeals) **or, as the case may be, the Commissioner (Appeals), may consider and** decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) by the appellant.

(9) The order of the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.

(10) A copy of every order passed by the Deputy Commissioner (Appeals) **or, as the case may be, the Commissioner (Appeals), under this** section shall be forwarded to the appellant and the Chief Commissioner or Commissioner.

28. (1) An assessee, objecting to an order passed by the Deputy Commissioner (Appeals) or, the Commissioner (Appeals) under section 20 or section 21 or section 27 may appeal to the Appellate Tribunal **within sixty days of the date on which the order is communicated to him.**

Appeal in
the Appel-
late
Tribunal.

(2) The Commissioner may, if he is not satisfied as to the correctness of any order passed by a Deputy Commissioner (Appeals) or, a Commissioner (Appeals) under section 27, direct the Assessing Officer to appeal to the Appellate Tribunal against such order, and such appeal may be made at any time before the expiry of sixty days of the date on which the order is communicated to the Commissioner.

(3) The Assessing Officer or the assessee, **as the case may be, on** receipt of the notice that an appeal against the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals) has been preferred under sub-section (1) or sub-section (2) by the other party, may, notwithstanding that he may not have appealed against such order or any part thereof, within thirty days of the receipt of the notice, file a memorandum of cross objections, verified in the prescribed manner, against any part of the order of the Deputy Commissioner (Appeals) or the Commissioner (Appeals), and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1) or sub-section (2).

(4) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross objections after the expiry of the rele-

vant period referred to in sub-section (1) or sub-section (2) or sub-section (3) if it is satisfied that there was sufficient cause for not presenting it within that period.

(5) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall, except in the case of an appeal referred to in sub-section (2), be accompanied by a fee of two hundred rupees.

(6) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, and any such orders may include an order enhancing the amount of gift-tax determined or penalty imposed:

Provided that no order enhancing the amount of gift-tax determined or penalty imposed shall be made unless the person affected thereby has been given a reasonable opportunity of showing cause against such enhancement.

(7) A copy of every order passed by the Appellate Tribunal under this section shall be forwarded to the assessee and the Commissioner.

(8) Save as provided in section 31, any order passed by the Appellate Tribunal on appeal shall be final.

(9) The provisions of sub-sections (1), (4) and (5) of section 255 of the Income-tax Act shall apply to the Appellate Tribunal in the discharge of its function under this Act as they apply to it in the discharge of its functions under the Income-tax Act.

Power of
Commissioner
to revise
orders of
subordi-
nate
authori-
ties.

29. (1) The Commissioner may, either on his own motion or an application made by an assessee in this behalf, call for the record of any proceeding under this Act in which an order has been passed by any authority subordinate to him, and may make such enquiry, or cause such enquiry to be made, and, subject to the provisions of this Act, pass such order thereon, not being an order prejudicial to the assessee, as the Commissioner thinks fit:

Provided that the Commissioner shall not revise any order under this sub-section in any case—

(a) where an appeal against the order lies to the Deputy Commissioner (Appeals) or to the Commissioner (Appeals) or to the Appellate Tribunal and the time within which such appeal can be made has not expired or, in the case of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal, the assessee has not waived his right of appeal;

(b) where the order is pending in appeal before the Deputy Commissioner (Appeals) or has been the subject of an appeal to the Commissioner (Appeals) or to the Appellate Tribunal;

(c) where the application is made by the assessee for such revision unless—

(i) the application is accompanied by a fee of rupees twenty-five; and

(ii) the application is made within one year from the date of the order sought to be revised or within such further period as the Commissioner may think fit to allow on being satisfied that the assessee was prevented by sufficient cause from making the application within that period; and

(d) where the order is sought to be revised by the Commissioner on his own motion, if such order is made more than one year previously.

Explanation.—For the purposes of this sub-section,—

(a) the Deputy Commissioner (Appeals) shall be deemed to be an authority subordinate to the Commissioner; and

(b) an order by the Commissioner declining to interfere shall be deemed not to be an order prejudicial to the assessee.

(2) Without prejudice to the provisions contained in sub-section (1), the Commissioner may call for and examine the record of any proceeding under this Act, and if he considers that any order passed therein by an Assessing Officer is erroneous in so far as it is prejudicial to the interest of revenue, he may, after giving the assessee an opportunity of being heard, and after making or causing to be made such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify including an order enhancing or modifying the assessment or cancelling it and directing a fresh assessment.

Explanation.—For the removal of doubts, it is hereby declared that, for the purposes of this sub-section,—

(a) an order passed by the Assessing Officer shall include an order passed by the Deputy Commissioner in exercise of the powers or in performance of the functions of an Assessing Officer conferred on or assigned to him under orders or directions issued by the Board or by the Chief Commissioner or Director General or Commissioner authorised by the Board in this behalf under section 120 of the Income-tax Act read with section 7 of this Act;

(b) "record" shall include all records relating to any proceeding under this Act available at the time of examination by the Commissioner;

(c) where any order referred to in this sub-section and passed by the Assessing Officer had been the subject-matter of any appeal, the powers of the Commissioner under this sub-section shall extend to such matters as had not been considered and decided in such appeal.

(3) No order shall be made under sub-section (2) after the expiry of two years from the end of the financial year in which the order sought to be revised was passed.

Explanation.—In computing the period of limitation for purposes of this sub-section, the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 51 and any period during which any proceeding under this section is stayed by an order or injunction of any court shall be excluded.

Appeal
to the
Appellate
Tribunal
from
orders of
penalty or
enhance-
ment by
Chief
Commis-
sioner or
Commis-
sioner

30. (1) An assessee objecting to an order of penalty passed by the Chief Commissioner or Commissioner under section 20 or section 21 or to an order of enhancement passed by him under section 29 or an order passed by the Director General or Director under section 21 may appeal to the Appellate Tribunal within sixty days of the date on which the order is communicated to him.

(2) An appeal to the Appellate Tribunal under sub-section (1) shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a fee of two hundred rupees.

(3) The provisions of sub-sections (4), (6), (7) and (8) of section 28 shall apply in relation to any appeal under this section as they apply in relation to any appeal under that section.

Refer-
ence to
High
Court.

31. (1) The assessee or the Chief Commissioner or Commissioner may, within sixty days of the date upon which he is served with notice of an order under section 28 or section 30, by application in the prescribed form, accompanied, where the application is made by the assessee, by a fee of two hundred rupees require the Appellate Tribunal to refer to the High Court any question of law arising out of such order and, subject to the other provisions contained in this section, the Appellate Tribunal shall, within one hundred and twenty days of the receipt of such application, draw up a statement of the case and refer it to the High Court.

(2) The Appellate Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from presenting the application within the period specified in sub-section (1), allow it to be presented within a further period not exceeding thirty days.

(3) If, on an application made under sub-section (1), the Appellate Tribunal,—

(a) refuses to state a case on the ground that no question of law arises, or

(b) rejects it on the ground that it is time-barred,

the applicant may, within ninety days from the date on which he is served with a notice of refusal or rejection, as the case may be, apply to the High Court, and the High Court may, if it is not satisfied with the correctness of the decision of the Appellate Tribunal, require the Appellate Tribunal to state the case to the High Court, and on receipt of such requisition the Appellate Tribunal shall state the case:

Provided that, if in any case where the Appellate Tribunal has been required by an assessee to state a case, the Appellate Tribunal refuses to do so on the ground that no question of law arises, the assessee may, within thirty days from the date on which he receives the notice of refusal to state the case, withdraw his application, and if he does so, the fee paid by him under sub-section (1) shall be refunded to him.

(4) If, on an application made under this section, the Appellate Tribunal is of the opinion that on account of a conflict in the decisions of High Courts in respect of any particular question of law, it is expedient

that a reference should be made direct to the Supreme Court, the Appellate Tribunal may draw up a statement of the case and refer it through its President direct to the Supreme Court.

(5) The statement to the High Court or the Supreme Court shall set forth the facts, determination of the Appellate Tribunal, and the question of law which arises out of the case.

(6) If the High Court or the Supreme Court is not satisfied that the case as stated is sufficient to enable it to determine the question of law raised thereby, it may require the Appellate Tribunal to make such modification therein as it may direct.

(7) The High Court or the Supreme Court, upon hearing any such case, shall decide the question of law raised therein, and in doing so, may, if it thinks fit, alter the form of the question of law and shall deliver judgment thereon containing the grounds on which such decision is founded and shall send a copy of the judgment under the seal of the Court and the signature of the Registrar to the Appellate Tribunal and the Appellate Tribunal shall pass such orders as are necessary to dispose of the case conformably to such judgment.

(8) The cost of any reference to the High Court or the Supreme Court which shall not include the fee for making the reference, shall be in the discretion of the Court.

32. When a case has been stated to the High Court under section 31, it shall be heard by a Bench of not less than two Judges of the High Court and shall be decided in accordance with the opinion of such Judges or of the majority of such Judges, if any:

Hear-
ing by
High
Court.

Provided that where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall then be heard upon that point only by one or more of the Judges of the High Court, and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

33. (1) An appeal shall lie to the Supreme Court from any judgment of the High Court delivered on a case stated under section 31 in any case which the High Court certifies as a fit case for appeal to the Supreme Court.

Appeal to
Supreme
Court.

(2) Where the judgment of the High Court is varied or reversed on appeal under this section, effect shall be given to the order of the Supreme Court in the manner provided in sub-section (7) of section 31.

(3) The High Court may, on application made to it for the execution of any order of the Supreme Court in respect of any costs awarded by it, transmit the order for execution to any court subordinate to the High Court.

34. Notwithstanding that a reference has been made to the High Court or the Supreme Court, or an appeal has been preferred to the Supreme Court, tax shall be payable in accordance with the assessment made in the case.

Tax to be
paid
notwith-
standing
refer-
ence,

Defini-
tion of
High
Court

35. In this Chapter, "High Court" means—

- (i) in relation to and State, the High Court of that State;
- (ii) in relation to the Union territory of Delhi, the High Court of Delhi;
- (iii) in relation to the States of Arunachal Pradesh and Mizoram, the Gauhati High Court (the High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura and Mizoram);
- (iv) in relation to the Union territory of Andaman and Nicobar Islands, the High Court at Calcutta;
- (v) in relation to the Union territory of Lakshadweep, the High Court of Kerala;
- (vi) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana;
- (vii) in relation to the State of Goa and the Union territories of Dadra and Nagar Haveli and Daman and Diu, the High Court at Bombay;
- (viii) in relation to the Union territory of Pondicherry, the High Court at Madras.

CHAPTER VII

PAYMENT AND RECOVERY OF GIFT-TAX

Gift tax
by whom
payable.

36. Subject to the provisions of this Act, gift-tax shall be payable by the donee.

Gift-tax
to be
charged
on pro-
perty
gifted.

37. Gift-tax payable in respect of any gift comprising immovable property shall be a first charge on that property but any such charge shall not affect the title of a *bona fide* purchaser for valuable consideration without notice of the charge.

Notice of
demand.

38. When any tax, additional gift-tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee a notice of demand in the prescribed form specifying the sum so payable.

Recovery
of tax
and
penalties

39. (1) Any amount specified as payable in a notice of demand under section 38 shall be paid within thirty days of the service of the notice at the place and to the person mentioned in the notice;

Provided that where the Assessing Officer has any reason to believe that it will be detrimental to revenue if the full period of thirty days aforesaid is allowed, he may, with the previous approval of the Deputy Commissioner, direct that the sum specified in the notice of demand shall be paid within such period being a period less than the period of thirty days aforesaid as may be specified by him in the notice of demand.

(2) If the amount specified in any notice of demand under section 38 is not paid within the period limited under sub-section (1), the assessee shall be liable to pay simple interest at one and one-half per cent. for every month or part of a month comprised in the period commencing from the day immediately following the end of the period mentioned in sub-section (1) and ending with the day on which the amount is paid:

Provided that where as a result of an order under section 27, or section 28, or section 29, or section 30, or section 31, or section 33, or section 42, the amount on which interest was payable under this section had been reduced, the interest shall be reduced accordingly and the excess interest paid, if any, shall be refunded.

(3) Without prejudice to the provisions contained in sub-section (2), on an application made by the assessee before the expiry of the due date under sub-section (1), the Assessing Officer may extend the time for payment or allow payment by instalments subject to such conditions as he may think fit to impose in the circumstances of the case.

(4) If the amount is not paid within the time limited under sub-section (1) or extended under sub-section (3), as the case may be, at the place and to the person mentioned in the said notice, the assessee shall be deemed to be in default.

(5) If, in a case where payment by instalments is allowed under sub-section (3), the assessee commits default in paying any one of the instalments within the time fixed under that sub-section, the assessee shall be deemed to be in default as to the whole of the amount then outstanding, and the other instalment or instalments shall be deemed to have been due on the same date as the instalment actually in default.

(6) Where the assessee has presented an appeal under section 27, the Assessing Officer may in his discretion and subject to such conditions as he may think fit to impose in the circumstances of the case, treat the assessee as not being in default in respect of the amount in dispute in the appeal, even though the time for payment has expired as long as such appeal remains undisposed of.

40. The provisions contained in sections 221 to 227, 228A, 229 and 232 of the Income-tax Act and the Second and the Third Schedules to that Act and any rules made thereunder shall, so far as may be, apply as if the said provisions were provisions of this Act and referred to gift-tax, additional gift-tax and sums imposed by way of penalty, fine and interest under this Act instead of to income-tax and sums imposed by way of penalty, fine and interest under that Act and to the corresponding gift-tax authorities instead of to the income-tax authorities specified therein.

Mode of
recovery.

Explanation I.—Any reference to sub-section (2) of sub-section (6) of section 220 of the Income-tax Act in the said provisions of that Act or the rules made thereunder shall be construed as references to sub-sections (2) and (6) respectively of section 39 of this Act.

Explanation II.—The Chief Commissioner or Commissioner and the Tax Recovery Officer referred to in the Income-tax Act shall be deemed

to be the corresponding gift-tax authorities for the purpose of recovery of gift-tax, additional gift-tax and sums imposed by way of penalty, fine and interest under this Act.

CHAPTER VIII

REFUNDS

Refunds. 41. (1) Where, as a result of any order passed in appeal or other proceeding under this Act, refund of any amount becomes due to the assessee, the Assessing Officer shall, except as otherwise provided in this Act, refund the amount to the assessee without his having to make any claim in that behalf:

Provided that where, by the order aforesaid,—

(a) an assessment is set aside or cancelled and an order of fresh assessment is directed to be made, the refund, if any, shall become due only on the making of such fresh assessment;

(b) the assessment is annulled, the refund shall become due only of the amount, if any, of the tax paid in excess of the tax chargeable on the taxable gift returned by the assessee.

(2) Where refund of an amount becomes due to the assessee as a result of an order under this Act or under the provisions of sub-section (1) of section 16 after a return has been made under section 12 or section 13 or in response to a notice under clause (i) or sub-section (6) of section 16 and the Assessing Officer is of the opinion, having regard to the fact that—

(i) a notice has been issued, or is likely to be issued, under sub-section (4) of section 16 in respect of the said return; or

(ii) the order is the subject-matter of an appeal or further proceeding; or

(iii) any other proceeding under this Act is pending, that a grant of refund is likely to adversely affect the revenue, the Assessing Officer may, with the previous approval of the Chief Commissioner or Commissioner, withhold the refund till such time as the Chief Commissioner or Commissioner may determine.

(3) (a) Where refund of any amount becomes due to the assessee under this Act, he shall, subject to the provisions of this sub-section, be entitled to receive, in addition to the said amount, simple interest thereon calculated at the rate of one and one-half per cent. for every month or part of a month comprised in the period or periods from the date or, as the case may be, dates of payment of the tax or penalty to the date on which the refund is granted.

Explanation.—For the purposes of this clause, “date of payment of the tax or penalty” means the date on and from which the amount of tax or penalty specified in the notice of demand issued under section 33 is paid in excess of such demand.

(b) If the proceedings resulting in the refund are delayed for reasons attributable to the assessee, whether wholly or in part, period of the delay so attributable to him shall be excluded from the period for which interest is payable, and where any question arises as to the period to be excluded, it shall be decided by the Chief Commissioner or Commissioner whose decision thereon shall be final.

(c) where, as a result of an order under sub-section (5) or sub-section (7) of section 16 or section 17 or section 27 or section 28 or section 29 or section 31 or section 33 or section 47, the amount on which the interest was payable under clause (a) has been increased or reduced, as the case may be, interest shall be increased or reduced accordingly, and, in a case where the interest is reduced, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the amount of the excess interest paid and requiring him to pay such amount; and such notice of demand shall be deemed to be a notice under section 38 and the provisions of this Act shall apply accordingly.

(4) Where under any of the provisions of this Act, a refund is found to be due to any person, the Assessing Officer, Deputy Commissioner (Appeals), Commissioner (Appeals) or Chief Commissioner or Commissioner, as the case may be, may, in lieu of payment of the refund, set off the amount to be refunded or any part of that amount, against the sum, if any, remaining payable under this Act by the person to whom the refund is due, after giving an intimation in writing to such person of the action proposed to be taken under this section.

CHAPTER IX

MISCELLANEOUS

42. (1) With a view to rectifying any mistake apparent from the record—

Rectifica-
tion of
mistakes

(a) the Assessing Officer may amend any order of assessment or of refund or any other order passed by him;

(b) a gift-tax authority may amend any intimation sent by it under sub-section (1) of section 16 or enhance or reduce the amount of refund granted by it under that sub-section;

(c) the Deputy Director or Deputy Commissioner or Director or Commissioner or Deputy Commissioner (Appeals) or Commissioner (Appeals) may amend any order passed by him under section 21;

(d) the Deputy Commissioner (Appeals) or Commissioner (Appeals) may amend any order passed by him under section 27;

(e) the Commissioner may amend any order passed by him under section 29;

(f) the Appellate Tribunal may amend any order passed by it under section 28 or section 30.

(2) Subject to the other provisions of this section, the authority concerned—

(a) may make an amendment under sub-section (1) of its own motion; and

(b) shall make such amendment for rectifying any such mistake which has been brought to its notice by the assessee, and where the authority concerned is the Deputy Commissioner (Appeals) or the Commissioner (Appeals) or the Appellate Tribunal, by the Assessing Officer also.

(3) An amendment, which has the effect of enhancing an assessment or reducing a refund or otherwise increasing the liability of the assessee, shall not be made under this section unless the authority concerned has given notice to the assessee of its intention so to do and has allowed the assessee a reasonable opportunity of being heard.

(4) Where an amendment is made under this section, an order shall be passed in writing by the gift-tax authority concerned.

(5) Subject to the provisions of sub-section (2) of section 41, where any such amendment has the effect of reducing the assessment, the Assessing Officer shall make any refund which may be due to such assessee.

(6) Where any such amendment has the effect of enhancing the assessment or reducing a refund already made, the Assessing Officer shall serve on the assessee a notice of demand in the prescribed form specifying the sum payable, and such notice of demand shall be deemed to be issued under section 38 and the provisions of this Act shall apply accordingly.

(7) No amendment under this section shall be made after the expiry of four years from the end of the financial year in which the order sought to be amended was passed.

Prose-
cutions.

43. (1) If any person fails without reasonable cause,—

(a) to furnish in due time any return of gifts under this Act;

(b) to produce, or cause to be produced, on or before the date mentioned in any notice under sub-section (6) of section 16, such accounts, records and documents as are referred to in the notice;

he shall, on conviction before a magistrate, be punishable with fine which may extend to rupees ten for every day during which the default continues.

(2) If a person makes a statement in a verification in any return of gifts furnished under this Act or in a verification mentioned in section 27, 28 or 30 which is false, and which he either knows or believes to be false, or does not believe to be true, he shall, on conviction before a magistrate, be punishable with simple imprisonment which may extend to one year, or with fine which may extend to rupees one thousand, or with both.

(3) If a person abets or induces in any manner another person to make and deliver an account, statement or declaration relating to any gifts chargeable to tax which is false and which he either knows to be false or does not believe to be true, he shall, on conviction before a magistrate, be punishable with simple imprisonment which may extend to six months or with fine which may extend to one thousand rupees, or with both.

(4) A person shall not be proceeded against for an offence under this Act except with the previous sanction of the Chief Commissioner or Director General or Commissioner:

Provided that no such sanction shall be required if the prosecution is at the instance of the Commissioner (Appeals).

(5) Any such offence may, either before or after the institution of proceedings, be compounded by—

(a) the Board or a Chief Commissioner or a Director General authorised by the Board in this behalf, in a case where the prosecution would lie at the instance of the Commissioner (Appeals);

(b) the Chief Commissioner or Director General or Commissioner, in any other case.

Explanation.—For the purposes of this section, “magistrate” means a presidency magistrate or a magistrate of the first class.

44. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences
by com-
panies.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means a body corporate, and includes—

(i) a firm, and

(ii) an association of persons or a body of individuals, whether incorporated or not; and

(b) “director”, in relation to—

(i) a firm, means a partner in the firm,

(ii) an association of persons or a body of individuals, means any member controlling the affairs thereof.

45. (1) Where an offence under this Act has been committed by a Hindu undivided family, the *karta* thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Offences
by Hindu
undivided
families.

Provided that nothing contained in this sub-section shall render the *karta* liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Section 360 of the Code of Criminal Procedure, 1973 and The Probation of Offenders Act, 1958, not to apply.

46. Nothing contained in section 360 of the Code of Criminal Procedure, 1973, or in the Probation of Offenders Act, 1958, shall apply to a person convicted of an offence under this Act, unless that person is eighteen years of age.

2 of 1974.
20 of 1958.

Presumption as to culpable mental state.

47. (1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—In this sub-section “culpable mental state” includes intention, motive or knowledge of a fact, or belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

Proof of entries in records or documents.

48. Entries in the records or other documents in the custody of a gift-tax authority shall be admitted in evidence in any proceedings for the prosecution of any person for an offence under this Act, and all such entries may be proved either by the production of the records or other documents in the custody of the gift-tax authority containing such entries, or by the production of a copy of the entries certified by the gift-tax authority having custody of the records or other documents under its signature and stating that it is a true copy of the original entries and that such original entries are contained in the records or other documents in his custody.

Power regarding discovery, production of evidence, etc.

49. (1) The Assessing Officer, the Deputy Commissioner (Appeals), the Commissioner (Appeals), the Chief Commissioner or Commissioner and the Appellate Tribunal shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters, namely:—

5 of 1908.

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company and examining him on oath;

(c) compelling the production of books of account and other documents; and

(d) issuing commissions.

(2) If the Director General or Director or Deputy Director or Assistant Director has reason to suspect that any gifts chargeable to tax under this Act have been concealed, or are likely to be concealed, by any person or class of persons within his jurisdiction, then, for the purposes of making any inquiry or investigation relating thereto, it shall be competent for him to exercise the powers conferred under sub-section (1) on the gift-tax authorities referred to in that sub-section, notwithstanding that no proceedings with respect to such person or class of persons are pending before him or any other gift-tax authority.

50. Where, for the purposes of this Act, it appears necessary for any gift-tax authority to obtain any statement or information from any person or banking company, such gift-tax authority may serve a notice requiring such person, on or before a date to be therein specified, to furnish such statement or information on the points specified in the notice, and that person shall, notwithstanding anything in any law to the contrary, be bound to furnish such statement or information to such gift-tax authority:

Power to call for information.

Provided that no legal practitioner shall be bound to furnish any statement or information under this section based on any professional communications made to him otherwise than as permitted by section 126 of the Indian Evidence Act, 1872.

1 of 1872.

51. Whenever in respect of any proceeding under this Act, any gift-tax authority ceases to exercise jurisdiction and is succeeded by another who has and exercises such jurisdiction, the authority so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor:

Effect of transfer of authorities on pending proceedings.

Provided that the assessee concerned may demand that before the proceeding is so continued the previous proceeding or any part thereof be reopened or that before any order of assessment is passed against him, he be reheard.

52. In computing the period of limitation prescribed for an appeal or an application under this Act, the day on which the order complained of was served and if the assessee was not furnished with a copy of the order when the notice of the order was served upon him, the time requisite for obtaining a copy of such order shall be excluded.

Computation of period of limitation.

53 (1) A notice or a requisition under this Act may be served on the person therein named either by post as if it were a summons issued by a court under the Code of Civil Procedure, 1908.

Service of notice.

5 of 1908.

(2) Any such notice or requisition may, in the case of a firm or a Hindu undivided family be addressed to any member of the firm or to the manager or any adult male member of the family, and in the case of a company or association of persons be addressed to the principal officer thereof.

(3) After a finding of total partition has been recorded by the Assessing Officer under section 25 in respect of any Hindu undivided family

notices under this Act in respect of the gift made by the family, shall be served on the person who was the last manager of the Hindu undivided family, or if such person is dead, then on all surviving adults who were members of the Hindu undivided family immediately before the partition.

(4) Where a firm or other association of persons is dissolved, notices under this Act in respect of the gifts received by the firm or association may be served on any person who was a partner (not being a minor) or member of the association, as the case may be, immediately before its dissolution.

Publica-
tion
of in-
formation
respecting
assessee.

54. (1) If the Central Government is of opinion that it is necessary or expedient in the public interest to publish the names of assessee and any other particulars relating to any proceedings or prosecutions under this Act in respect of such assessee, it may cause to be published such names and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Deputy Commissioner (Appeals) or, as the case may be, the Commissioner (Appeals) has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of a firm, company or other association of persons, the names of the partners of the firm, directors, secretaries and treasurers, or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Central Government, the circumstances of the case justify it.

Disclosure
of in-
formation
respecting
assessee.

55. Where a person makes an application to the Chief Commissioner or Commissioner in the prescribed form for any information relating to any assessee in respect of any assessment made under this Act, the Chief Commissioner or Commissioner may, if he is satisfied that it is in the public interest so to do, furnish or cause to be furnished the information asked for in respect of that assessment only and his decision in this behalf shall be final and shall not be called in question in any court of law.

Return of
gifts, etc.,
not to be
invalid on
certain
grounds.

56. No return of gifts, assessment, notice, summons or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such return of gifts, assessment, notice, summons or other proceeding, if such return of gifts, assessment, notice, summons or other proceeding, is in substance and effect in conformity with or according to the intent and purpose of this Act.

Bar of
suits in
civil
court.

57. No suit shall lie in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other legal proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act.

58. An assessee who is entitled to or required to attend before any gift-tax authority or the Appellate Tribunal in connection with any proceeding under this Act, except where he is required under this Act to attend in person, may attend by a person who would be entitled to represent him before any Income-tax authority or the Appellate Tribunal under section 288 of the Income-tax Act.

Appearance before gift-tax authorities by authorised representatives.

59. Any assessee who is entitled or required to attend before any gift-tax authority or the Appellate Tribunal in connection with any matter relating to the valuation of any asset, except where he is required under this Act to attend in person, may attend by a registered valuer.

Appearance by registered valuer in certain matters.

60. The Central Government may enter into an agreement with the Government of any reciprocating country—

Agreement for avoidance or relief of double taxation with respect to gift-tax.

(a) for the avoidance or relief of double taxation with respect to gift-tax payable under this Act and under the corresponding law in force in the reciprocating country, or

(b) for exchange of information for the prevention of evasion or avoidance of gift-tax chargeable under this Act or under the corresponding law in force in that country or investigation of cases of such evasion or avoidance, or

(c) for recovery of tax under this Act and under the corresponding law in force in that country,

and may, by notification in the Official Gazette, make such provision as may be necessary for implementing the agreement.

Explanation.—The expression “reciprocating country” for the purposes of this Act means any country which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating country.

61. The amount assessed in accordance with the foregoing provisions of this Act as being the value of all taxable gifts shall be rounded off to the nearest multiple of ten rupees and, for this purpose, any part of a rupee consisting of paise shall be ignored and thereafter, if such amount is not a multiple of ten rupees, then, if the last figure in that amount is five or more, the amount shall be increased to the next higher amount which is multiple of ten and, if the last figure is less than five, the amount shall be reduced to the next lower amount which is a multiple of ten; and the amount so rounded off shall be deemed to be the value of all taxable gifts of the assessee for the purposes of this Act.

Rounding off of taxable gifts.

62. The amount of gift-tax, additional gift-tax, interest, penalty, fine or any other sum payable, and the amount of refund due, under the provisions of this Act, shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee, and if such part is less than fifty paise, it shall be ignored.

Rounding off of tax, etc.

63. (1) The Board may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

Power to make rules.

(2) In particular, and without prejudice to the generality of the foregoing power, rules made under this section may provide for—

(a) the manner in which the orders relating to instructions to subordinate authority shall be published and circulated for general information under sub-section (3) of section 2;

(b) the form in which returns under sub-section (1) of section 12 shall be made and the manner in which they shall be verified

(c) the form in which returns under sub-section (6) of section 16 shall be made and the manner in which they shall be verified;

(d) the percentage or the amount by which the fair market value of the property shall not exceed the value of the property as returned by the assessee under sub-section (8) of section 16;

(e) the form in which return under sub-section (1) of section 17 shall be made and the manner in which they shall be verified under that sub-section;

(f) the form in which notice of demand under sub-section (4) of section 19 or under section 38 or under section 41 are to be made;

(g) the form in which appeals under sub-section (1) or sub-section (2) section 27, or under sub-section (5) of section 28, or under sub-section (2) of section 30 shall be made, and the manner in which they shall be verified;

(h) the form in which application for reference is to be made under sub-section (1) of section 31;

(i) the form in which an application is to be made under section 55;

(j) any other matter which has to be or may be prescribed for the purposes of this Act.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect, from a date not earlier than the date of commencement of this Act, to the rules or any of them and, unless the contrary is permitted (whether expressly or by necessary implication), no retrospective effect shall be given to any rule so as to prejudicially affect the interests of assesseees.

(4) The Central Government shall cause every rule made under this Act to be laid as soon as may be after it is made before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modifications in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

18 of 1958.

64. (1) The Gift-tax Act, 1958, is hereby repealed.

18 of 1958.

(2) Notwithstanding the repeal of the Gift-tax Act, 1958 (hereinafter referred to as the repealed Act)—

Repeal
and
savings.

(a) in clause (xx) of section 2 of the repealed Act, the "previous year" relevant to assessment year commencing on the 1st day of April, 1990 shall be the period ending on the 19th day of March, 1990;

(b) where a return of gift has been filed before the commencement of this Act by any person for any assessment year, proceedings for the assessment of that person for that year may be taken and continued in accordance with the provisions of the repealed Act, as if this Act had not been passed;

(c) where a return of gift is filed after the commencement of this Act by any person for the assessment year ending on the 31st day of March, 1991, or any earlier year, the assessment of that person for that year shall be made in accordance with the provisions of the repealed Act, as if this Act had not been passed;

(d) any proceeding pending on the commencement of this Act before any gift-tax authority, the Appellate Tribunal or any court, by way of appeal, reference, or revision, shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed;

(e) where in respect of any assessment year ending on the 31st day of March, 1991,—

(i) a notice under section 16 of the repealed Act had been issued before the commencement of this Act, the proceedings in pursuance of such notice may be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed;

(ii) any gift chargeable to tax had escaped assessment within the meaning of that expression in section 16 and no proceedings under section 16 of the repealed Act in respect of any such gift are pending at the commencement of this Act, a notice under section 16 may be issued with respect to that assessment year and all the provisions of the repealed Act shall apply accordingly, as if this Act had not been passed;

(f) any proceeding for the imposition of a penalty in respect of any assessment completed before the 20th day of March, 1990, may be initiated and any such penalty may be imposed in accordance with the provisions of the repealed Act as if this Act had not been passed;

(g) any proceeding for the imposition of a penalty in respect of any assessment for the year ending on the 31st day of March, 1991, or any earlier year, which is computed on or after the 20th day of March, 1990 may be initiated and any such penalty may be imposed under the repealed Act as if this Act had not been passed;

(h) where, in respect of any assessment completed before the commencement of this Act, a refund falls due after such commencement or default is made after such commencement in the payment of any sum due under such completed assessment, the provisions of the repealed Act relating to interest payable by the Central Government on refund and interest payable by the assesseees for default shall apply, as if this Act had not been passed;

(i) any sum payable by way of gift-tax, additional gift-tax, interest, penalty or otherwise under the repealed Act may be recovered under the repealed Act, as if this Act had not been passed.

Power
to remove
difficul-
ties.

65. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the such provisions of this Act as may appear necessary for removing the difficulty:

Provided that no such order shall be made after the 31st day of March, 1994.

(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament.

THE FIRST SCHEDULE

[See sections 3 and 23 (2)]

Rates of gift-tax

- (1) where the value of all taxable gifts does not exceed Rs. 20,000 *Nil*;
- (2) where the value of all taxable gifts exceeds Rs. 20,000 but does not exceed Rs. 50,000 20 per cent. of the amount by which the value of such gifts exceeds Rs. 20,000;
- (3) where the value of all taxable gifts exceeds Rs. 50,000 but does not exceed Rs. 2,00,000 Rs. 6,000 *plus* 30 per cent. of the amount by which the value of such gifts exceeds Rs. 50,000;
- (4) where the value of all taxable gifts exceeds Rs. 2,00,000 Rs. 51,000 *plus* 40 per cent of the amount by which the value of such gifts exceeds Rs. 2,00,000.

THE SECOND SCHEDULE

[See sections 6 and 16(8)]

RULES FOR DETERMINING THE VALUE OF PROPERTY GIFTED

Value of gifted property, how to be determined

The value of any property, other than cash, transferred by way of gift shall, for the purposes of this Act, be determined in accordance with the provisions of Schedule III to the Wealth-tax Act, which shall apply subject to the following modifications, namely:—

In the said Schedule,—

(a) reference by whatever form of words to the Wealth-tax Act shall be construed as references to this Act;

(b) in rule 5, the reference to the year ending on the valuation date shall be construed as a reference to the previous year as defined in this Act;

(c) save as provided in clause (b), ~~References to the valuation date shall be construed as references to date on which the gift was made;~~

(d) reference to section 7 of the Wealth-tax Act shall be construed as references to section 6 of this Act;

(e) references to section 16A of the Wealth-tax Act shall be construed as references to sub-section (8) of section 16 of this Act.

STATEMENT OF OBJECTS AND REASONS

At present, gift-tax is charged annually on the value of all taxable gifts made by a donor during a year. There is no tax on the gifts received by a donee, irrespective of the value. The object of this Bill is to shift the burden of tax from donors to the recipient of the gifts, with a view to curbing laundering of black money and the practice of explaining wasteful and ostentatious expenditure as having been incurred out of gifts received.

2. The Bill has the following salient features:—

(i) gift-tax will be levied in respect of gifts received by a person during the previous year;

(ii) in computing the value of all taxable gifts a number of exemptions shall be taken into consideration. The exemptions, *inter alia*, includes exemption for gifts received in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Regulation Act, 1973, ~~gifts received by an individual~~ on the occasion of his marriage up to a maximum of rupees one lakh and gifts received under a will;

(iii) there will be a basic exemption of rupees twenty thousand for each year and gift-tax will be levied at progressive rates in case the gifts received in any year exceeds the maximum limit of exemption.

3. The Bill also provides for all other matters relating to levy of interest, filing of appeals, rectification of mistakes, recovery of tax, imposition of penalty and prosecution and matters relating to procedure on the lines of the relevant provisions of the existing Gift-tax Act, 1958.

NEW DELHI;
The 30th May, 1990.

MADHU DANDAVATE.

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE
CONSTITUTION OF INDIA

[Copy of letter dated the 30th May, 1990 from Prof. Madhu Dandavate, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the Gift-tax Bill, 1990 recommends under clauses (1) and (3) of article 117 of the Constitution, the introduction of the above Bill in Lok Sabha.

Notes on clauses

Clause 2 defines, *inter alia*, "gift", "previous year" and "transfer of property". All voluntary transfers of property without consideration and transfers deemed to be gifts under clause 4 of the Bill are covered by the definition of "gift". However, any receipt which is income within the meaning of the Income-tax Act, shall not be treated as a gift. The definition of "previous year" secures that all gifts received during any period, not exceeding twelve months, ending on the 31st day of March immediately preceding the assessment year, are charged to gift-tax in one year. However, the previous year in respect of the assessment year 1991-92 shall be the period commencing on the 20th day of March, 1990 and ending on the 31st day of March, 1991. The definition of "transfer of property" is designed to cover all possible transfers of property.

Clause 3 is the charging clause which provides that the tax is to be levied on all gifts received during the previous year by any person, being an individual or a Hindu undivided family or a company or a firm or an ~~association of persons or a body of~~ individuals.

Clause 4 brings to charge certain transfers which are for nominal or inadequate consideration or for a consideration which although stipulated is not meant to pass actually. Similarly, the release or discharge from one's debts or liabilities, appropriations or withdrawals from joint accounts for the benefit of a person other than the persons who made the original deposit or investment, are brought within the scope of gifts.

Clause 5 provides for the exemptions of various types of gifts. These *inter alia*, includes—

(a) gifts of immovable property situated outside the territories to which this Act extends;

(b) gift by a person resident outside India, out of the monies standing to his credit in a non-resident (external) account in any bank in accordance with the provisions of the Foreign Exchange Regulation Act;

(c) gifts in convertible foreign exchange remitted from a country outside India in accordance with the provisions of the Foreign Exchange Regulation Act;

(d) gifts on the occasion of the marriage subject to a maximum of rupees one lakh in value;

(e) gifts received by a political party; and

(f) gifts received under a will.

Clause 6 provides for the manner in which the values of gifts may be determined. The method of valuation shall be the same as provided in the Wealth-Tax Act, 1957.

Clauses 7 to 11 deal with the administrative machinery. The intention is to entrust the administration of this Act to the officers of the Income-tax Department under a procedure which follows broadly the procedure in the repealed Gift-tax Act, 1958.

Clauses 12 to 21 are provisions relating to assessment which follows similar provisions in the repealed Gift-tax Act, 1958.

Clauses 22 to 26 relate to assessment in special cases. These provisions provide for the liability to assessment in the case of a deceased person, persons leaving India, a minor, lunatic or idiot. It also provides for assessment on partition of a Hindu undivided family, discontinuance of firm or association of persons and a company in liquidation.

Clauses 27 to 35 relate to appeals, revision and references and are similar to those in the repealed Gift-tax Act, 1958.

Clause 36 provides that the tax is the liability of the donee.

Clause 37 makes the gift-tax a first charge on the immovable property comprised in the gift.

Clauses 38 to 40 provide for payment and recovery of the tax and other connected matters and are similar to those in the repealed Gift-tax Act, 1958.

Clause 41 relates to refund and is similar to the provisions on refund in the repealed Gift-tax Act, 1958.

Clauses 42 to 62 provide for rectification of mistakes, prosecutions, liability of persons for offences by companies or a Hindu undivided family, non-applicability of section 360 of the Code of Criminal Procedure, 1973 and the provision of Probation of Offenders Act, 1958, presumption as to culpable mental state proof of entries in records or documents, power regarding discovery, evidence, etc., power to call for information, effect of transfer of authorities on pending proceedings, computation of period of limitation, service of notice, publication of information respecting assessee, disclosure of information respecting assessee, return of gifts, etc., not to be invalid on certain grounds, bar of suits in civil courts, appearance before gift-tax authorities by authorised representative appearance by registered valuer in certain matters, agreement for avoidance or relief of double taxation with respect to gift tax, rounding off of taxable gifts, and rounding off of tax, etc. These provisions are similar to those in the repealed Gift-tax Act, 1958.

Clause 63 makes the provision authorising the Central Board of Direct Taxes to make rules for carrying out the purposes of the Act.

Clause 64 provides for the repealing of the Gift-tax Act, 1958.

Clause 65 empowers the Central Government to issue any order so as to remove any difficulty that may arise in giving effect to the provisions of this Act. These orders are required to be published in the Official Gazette and will be laid before each House of Parliament. However, no order shall be made after the 31st day of March, 1994.

FINANCIAL MEMORANDUM

Clause 7 of the Bill seeks to create gift-tax authorities for the purposes of the administration of the Act.

2. The posts of gift-tax authorities under the proposed legislation will only be a substitute to the existing posts of gift-tax authorities under the Gift-tax Act, 1958. As such no additional amount will be drawn from the Consolidated Fund of India for the administration of the Act.

3. The provisions of the Bill will not involve any other expenditure of a recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 63 of the Bill authorises the Central Board of Direct Taxes to **make** rules with respect to matters like the manner in which the orders relating to instruction to subordinate authorities shall be published and circulated for general information, the form in which returns may be made under various provisions of the Act, the form in which appeals should be filed, the form in which a memorandum of cross objections under the Act shall be made and the form in which notices of demand should be issued.

2. Clause 65 of the Bill relates to power to remove difficulties. The provisions of the said clause empower the Central Government to make orders for removing any difficulty which may arise in giving effect to the provisions of the proposed legislation. It is also being provided that no such order shall be made after the 31st day of March, 1994 and every such order shall be published in the Official Gazette and laid before each House of Parliament.

3. The matters in respect of which the said rules or orders may be made are matters of procedure and administrative detail, and it is not practicable to provide them in the proposed legislation itself.

4. The delegation of legislative power is, therefore, of a normal character.

SUBHASH C. KASHYAP,
Secretary-General.